

**LAWS AND RESOLUTIONS
OF THE STATE OF MONTANA
Volume I of II**

**Enacted or Adopted by the
SIXTY-FIFTH LEGISLATURE
IN REGULAR SESSION**

**Held at Helena, the Seat of Government
January 2, 2017, through April 28, 2017**

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**OFFICERS AND MEMBERS
OF THE MONTANA SENATE**

2017

50 Members

32 Republicans

18 Democrats

OFFICERS

PresidentScott Sales
 President Pro TemporeBob Keenan
 Majority Leader.....Fred Thomas
 Majority Whips..... Mark Blasdel, Ed Buttrey, Cary Smith
 Minority LeaderJon Sesso
 Minority Whips Tom Facey, JP Pomnichowski
 Secretary of the Senate..... Marilyn Miller
 Sergeant at Arms Carl Spencer

MEMBERS

Name	Party	District	Preferred Mailing Address
Ankney, Duane	R	20	PO Box 2138, Colstrip MT 59323-2138
Barrett, Dick	D	45	219 Agnes Ave, Missoula MT 59801-8730
Blasdel, Mark	R	4	PO Box 1493, Kalispell MT 59903-1493
**Boland, Cydnie (Carlie)	D	12	1215 6th Ave N, Great Falls MT 59401-1601
Brown, Dee	R	2	PO Box 444, Hungry Horse MT 59919-0444
Buttrey, Edward	R	11	27 Granite Hill Ln, Great Falls MT 59405-8041
Caferro, Mary	D	41	607 N Davis St, Helena MT 59601-3737
Cohenour, Jill	D	42	2610 Colt Dr, East Helena MT 59635-3442
Connell, Pat	R	43	567 Tiffany Ln, Hamilton MT 59840-9241
Facey, Tom	D	50	418 Plymouth St, Missoula MT 59801-4133
Fielder, Jennifer	R	7	PO Box 2558, Thompson Falls MT 59873-2558
Fitzpatrick, Steve	R	10	3203 15th Ave S, Great Falls MT 59405-5416
Gauthier, Terry	R	40	PO Box 4939, Helena MT 59604
Gross, Jen	D	25	P.O. Box 30821, Billings MT 59107
Hinebauch, Steve	R	18	610 Road 118, Wibaux MT 59353
Hinkle, Jedediah	R	32	1700 Drummond Blvd, Belgrade MT 59714
Hoven, Brian	R	13	1501 Meadowlark Dr, Great Falls MT 59404-3325
Howard, David	R	29	PO Box 10, Park City MT 59063-0010
Jones, Llew	R	9	1102 4th Ave SW, Conrad MT 59425-1919
Kary, Doug	R	22	415 W Wicks Ln, Billings MT 59105-3457
Keenan, Bob	R	5	PO Box 697, Bigfork MT 59911-0697
Lang, Mike	R	17	PO Box 109, Malta MT 59538-0109
MacDonald, Margaret (Margie)	D	26	PO Box 245, Billings MT 59103
Malek, Sue	D	46	1400 Prairie Way, Missoula MT 59802-3420
McClafferty, Edie	D	38	1311 Stuart Ave, Butte MT 59701-5014
McNally, Mary	D	24	PO Box 20584, Billings MT 59104-0584
*Moe, Mary	D	12	8 Prospect Dr, Great Falls MT 59405-4120
Moore, Frederick (Eric)	R	19	487 Signal Butte Rd, Miles City MT 59301-9205
Olszewski, Albert	R	6	PO Box 8891, Kalispell MT 59904-1243
Osmundson, Ryan	R	15	1394 S Buffalo Canyon Rd, Buffalo MT 59418-8005
Phillips, Mike	D	31	9 W Arnold St, Bozeman MT 59715-6127
Pomnichowski, JP	D	33	222 Westridge Dr, Bozeman MT 59715-6025
Regier, Keith	R	3	1078 Stillwater Rd, Kalispell MT 59901-6902
Richmond, Tom	R	28	3103 Westfield Dr, Billings MT 59106-1402

Sales, Scott	R	35	PO Box 11163, Bozeman MT 59719-1163
Salomon, Daniel	R	47	42470 Salomon Rd, Ronan MT 59864-9272
Sands, Diane	D	49	4487 Nicole Ct, Missoula MT 59803-2791
Sesso, Jon	D	37	811 W Galena St, Butte MT 59701-1540
Small, Jason	R	21	HC 42 Box 560, Busby MT 59016
Smith, Cary	R	27	6133 Timbercove Dr, Billings MT 59106-
Smith, Frank	D	16	PO Box 729, Poplar MT 59255-0729
Swandal, Nels	R	30	PO Box 147, Wilsall MT 59086-0147
Tempel, Russel	R	14	1839 1200 Rd S, Chester MT 59522
Thomas, Fred	R	44	1004 S Burnt Fork Rd, Stevensville MT 59870-6658
Vance, Gordon	R	34	PO Box 1, Belgrade MT 59714
Vincent, Chas	R	1	34 Paul Bunyan Ln, Libby MT 59923-7990
Vuckovich, Gene	D	39	1205 W 3rd St, Anaconda MT 59711-1801
Webb, Roger	R	23	1132 Ginger Ave, Billings MT 59105-2062
Welborn, Jeffrey	R	36	PO Box 790, Dillon MT 59725-0790
Whitford, Lea	D	8	221 Ed Williams Rd, Cut Bank MT 59427-9144
Wolken, Cynthia	D	48	PO Box 16503, Missoula MT 59808-6503

*Resigned February 6, 2017

**Appointed to fill vacated SD 12 seat

**OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES**

2017

100 Members

59 Republicans

41 Democrats

OFFICERS

Speaker.....Austin Knudsen
 Speaker Pro Tempore Greg Hertz
 Majority Leader..... Ron Ehli
 Majority Whips.....Seth Berglee, Alan Doane, Theresa Manzella, Brad Tschida
 Minority Leader Jenny Eck
 Minority Caucus ChairTom Woods
 Minority Whips Nate McConnell, Shane Morigeau, Casey Schreiner
 Chief Clerk of the House Lindsey Vroegindewey
 Sergeant at Arms Brad Murfitt

MEMBERS

Name	Party	District	Preferred Mailing Address
Abbott, Kim	D	83	PO Box 1752, Helena MT 59624
Anderson, Fred	R	20	1609 39th St S, Great Falls MT 59405
Bachmeier, Jacob	D	28	714 14th St, Havre MT 59501
Ballance, Nancy	R	87	PO Box 314, Hamilton MT 59840-0314
Bartel, Dan	R	29	PO Box 1181, Lewistown MT 59457
Beard, Becky	R	80	PO Box 85, Elliston MT 59728
Bennett, Bryce	D	91	118 W Alder St Apt 306, Missoula MT 59802-4233
Berglee, Seth	R	58	PO Box 340, Joliet MT 59041-0340
Bishop, Laurie	D	60	211 South Yellowstone St, Livingston MT 59047
Brodehl, Randy	R	9	16 White Bark, Kalispell MT 59901-2122
Brown, Bob	R	13	PO Box 1907, Thompson Falls MT 59873-1907
Brown, Zach	D	63	601 S Tracy Ave, Bozeman MT 59715-5321
Burnett, Tom	R	67	4143 Rain Roper Dr, Bozeman MT 59715-0634
Cook, Rob	R	18	223 1st Ave SW, Conrad MT 59425-1805
Court, Virginia	D	50	18 Heatherwood Ln, Billings MT 59102-2449
Cuffe, Mike	R	2	PO Box 1685, Eureka MT 59917-1685
Curdy, Willis	D	98	11280 Kona Ranch Rd, Missoula MT 59804-9790
Curtis, Amanda	D	74	1117 N Emmett Ave, Butte MT 59701-8514
Custer, Geraldine	R	39	PO Box 1075, Forsyth MT 59327-1075
Doane, Alan	R	36	268 County Road 521, Bloomfield MT 59315-9500
Dudik, Kimberly	D	94	PO Box 16712, Missoula MT 59808-6712
Dunwell, Mary Ann	D	84	PO Box 4656, Helena MT 59604
Eck, Jenny	D	79	PO Box 1206, Helena MT 59624-1206
Ehli, Ron	R	86	PO Box 765, Hamilton MT 59840-0765
Ellis, Janet	D	81	PO Box 385, Helena MT 59624-0385
Essmann, Jeff	R	54	PO Box 80945, Billings MT 59108-0945
Fern, Dave	D	5	211 Dakota Ave, Whitefish MT 59937
Fitzgerald, Ross	R	17	451 1st Rd NE, Fairfield MT 59436
Fleming, John	D	93	55533 McKeever Rd, Saint Ignatius MT 59865-9331
Flynn, Kelly	R	70	PO Box 233, Townsend MT 59644-0233
Funk, Moffie	D	82	825 8th Ave, Helena MT 59601-3716
Galt, Wylie	R	30	106 71 Ranch Rd, Martinsdale MT 59053
Garner, Frank	R	7	PO Box 10176, Kalispell MT 59904-0176
Glimm, Carl	R	6	5107 Ashley Lake Rd, Kila MT 59920-9787
Greef, Edward	R	88	PO Box 1327, Florence MT 59833-1327
Grubbs, Bruce	R	68	322 North 22nd Ave, Bozeman MT 59718
Gunderson, Steve	R	1	310 Conifer Rd, Libby MT 59923
Hamilton, Jim	D	61	155 Franklin Hills Dr, Bozeman MT 59715

Hamlett, Bradley Maxon	D	23	PO Box 49, Cascade MT 59421-0049
Harris, Bill	R	37	PO Box 205, Winnett MT 59087-0205
Hayman, Denise	D	66	120 Sourdough Ridge Rd, Bozeman MT 59715
Hertz, Adam	R	96	2735 Peregrine Loop, Missoula MT 59808
Hertz, Greg	R	12	PO Box 1747, Polson MT 59860-1747
Hill Smith, Ellie	D	90	501 Daly Ave, Missoula MT 59801-4412
Holmlund, Kenneth	R	38	1612 Tomy St, Miles City MT 59301-4431
Hopkins, Mike	R	92	PO Box 848, Missoula MT 59806
Jacobson, Tom	D	21	521 Riverview Dr E, Great Falls MT 59404-1634
Jones, Donald	R	46	1945 Clark Ave, Billings MT 59102-4019
Karjala, Jessica	D	48	6125 Masters Blvd, Billings MT 59106-1036
Keane, Jim	D	73	2131 Wall St, Butte MT 59701-5527
Kelker, Kathy	D	47	2438 Rimrock Rd, Billings MT 59102-0556
Kipp Iii, George	D	15	PO Box 191, Heart Butte MT 59448-0191
Knokey, Jon	R	65	2607 Rose St, Bozeman MT 59718
Knudsen, Austin	R	34	PO Box 624, Culbertson MT 59218-0624
Knudsen, Casey	R	33	PO Box 18, Malta MT 59538
Lavin, Steve	R	8	PO Box 11241, Kalispell MT 59904-4241
Lenz, Dennis	R	53	PO Box 20752, Billings MT 59104-0752
Loge, Denley	R	14	1296 4 Mile Rd, Saint Regis MT 59866
Lynch, Ryan	D	76	PO Box 934, Butte MT 59703-0934
Mandeville, Forrest	R	57	PO Box 337, Columbus MT 59019-0337
Manzella, Theresa	R	85	640 Gold Creek Loop, Hamilton MT 59840-9742
McCarthy, Kelly	D	49	625 Yellowstone Ave, Billings MT 59101-1624
McConnell, Nate	D	89	PO Box 8511, Missoula MT 59807-8511
McKamey, Wendy	R	19	33 Upper Millegan Rd, Great Falls MT 59405-8427
Morigeau, Shane	D	95	PO Box 7552, Missoula MT 59807
Mortensen, Dale	R	44	446 Caravan Ave, Billings MT 59105-2839
Noland, Mark	R	10	PO Box 1852, Bigfork MT 59911-1852
O'Hara, James	R	27	5254 Frenchman Ridge Rd, Fort Benton MT 59442
Olsen, Andrea	D	100	622 Rollins St, Missoula MT 59801-3719
Patelis, Jimmy	R	52	6312 Gray Hawk Way, Billings MT 59108
Peppers, Rae	D	41	PO Box 497, Lame Deer MT 59043-0497
Perry, Zac	D	3	PO Box 268, Hungry Horse MT 59919-0268
Pierson, Gordon	D	78	603 Washington St, Deer Lodge MT 59722-1347
Price, Jean	D	24	422 15th St S, Great Falls MT 59405-2424
Redfield, Alan	R	59	538 Mill Creek Rd, Livingston MT 59047-8709
Regier, Matt	R	4	PO Box 9763, Kalispell MT 59904-9763
Ricci, Vince	R	55	1231 5th Ave, Laurel MT 59044-9602
Rosendale, Adam	R	51	812 Wyoming Ave, Billings MT 59101
Ryan, Marilyn	D	99	2407 56th St, Missoula MT 59806
Sales, Walt	R	69	3400 Stagecoach Trail, Manhattan MT 59741
Schreiner, Casey	D	26	2223 6th Ave N, Great Falls MT 59401-1819
Shaw, Ray	R	71	251 Bivens Creek Rd, Sheridan MT 59749-9638
Sheldon-Galloway, Lola	R	22	202 Sun Prairie Rd, Great Falls MT 59404
Skees, Derek	R	11	PO Box 9134, Kalispell MT 59901
Smith, Bridget	D	31	516 Hill St, Wolf Point MT 59201-1245
Staffanson, Scott	R	35	34704 County Road 122, Sidney MT 59270-6353
Stewart-Perego, Sharon	D	42	PO Box 211, Crow Agency MT 59022-0211
Swanson, Kathy	D	77	308 E 6th St, Anaconda MT 59711-3016
Trebas, Jeremy	R	25	PO Box 2364, Great Falls MT 59403
Tschida, Brad	R	97	10825 Mullan Rd, Missoula MT 59808-9479
Usher, Barry	R	40	6900 South Frontage Rd, Billings MT 59101
Vinton, Sue	R	56	5115 High Trail Rd, Billings MT 59101
Wagoner, Kirk	R	75	1 Jackson Creek Rd #2347, Montana City MT 59634-9714
Webb, Peggy	R	43	1132 Ginger Ave, Billings MT 59105
Webber, Susan	D	16	PO Box 1011, Browning MT 59417-1011
Welch, Tom	R	72	607 Highland Ave, Dillon MT 59725
White, Kerry	R	64	4000 Blackwood Rd, Bozeman MT 59718-7621
Windy Boy, Jonathan	D	32	PO Box 250, Box Elder MT 59521-0195
Woods, Tom	D	62	1447 Cherry Dr, Bozeman MT 59715-5924
Zolnikov, Daniel	R	45	PO Box 50403, Billings MT 59105-0403

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38 (*Howard*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PUBLIC ASSISTANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 10, 2017, TO THE SENATE 1864

39 (*Vance*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 10, 2017, TO THE SENATE 1865

43 (*Vincent*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF WATER WELL CONTRACTORS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 11, 2017, TO THE SENATE 1865

44 (*Vincent*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF ASSOCIATE WATER JUDGE MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 17, 2017, TO THE SENATE 1866

45 (*Fielder*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 8, 2017, TO THE SENATE 1866

46 (*Buttrey*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 11, 2017, TO THE SENATE..... 1867

47 (*Salomon*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF REGENTS OF HIGHER EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 3, 2017, TO THE SENATE 1867

49 (*Hoven*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2017, TO THE SENATE 1867

50 (*Regier*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 3, 2017, TO THE SENATE..... 1868

51 (*Vance*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF AERONAUTICS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 10, 2017, TO THE SENATE 1869

52 (*Salomon*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA ARTS COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 10, 2017, TO THE SENATE 1869

53 (*Ankney*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 10, 2017, TO THE SENATE..... 1870

54 (*Regier*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE EIGHTH JUDICIAL DISTRICT COURT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 14, 2017, TO THE SENATE 1870

55 (*Buttrey*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE COMMISSION FOR HUMAN RIGHTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2017, TO THE SENATE 1871

56 (*Buttrey*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2017, TO THE SENATE 1871

57 (*Whitford*) URGING CONGRESS TO RETAIN PERMANENT REAUTHORIZATION OF THE INDIAN HEALTH CARE IMPROVEMENT ACT WHEN MAKING CHANGES TO OR REPEALING THE PATIENT PROTECTION AND AFFORDABLE CARE ACT 1872

58 (*Ankney*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2017, TO THE SENATE 1873

59 (*Brown*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE..... 1873

60 (*Salomon*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE..... 1874

61 (*Salomon*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA HISTORICAL SOCIETY BOARD OF TRUSTEES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE 1874

62 (*Howard*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF OPTOMETRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE 1875

63 (*Hoven*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS RELATED TO LIVESTOCK AND MILK CONTROL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE..... 1875

64 (*Fielder*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE FISH AND WILDLIFE COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE..... 1876

65 (*Regier*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO BOARD OF CRIME CONTROL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE 1876

66 (*Buttrey*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF HOUSING, THE BOARD OF PERSONNEL APPEALS, AND THE UNEMPLOYMENT INSURANCE APPEALS BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 5, 2017, TO THE SENATE... 1877

67 (*Regier*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2017, TO THE SENATE 1878

68 (*Brown*) CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE COMMISSIONER OF POLITICAL PRACTICES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 19, 2017, TO THE SENATE..... 1878

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LAWS
Enacted by the
SIXTY-FIFTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 2, 2017, through April 28, 2017

Explanatory Note:
New parts of existing statutes are printed in italics and
deleted provisions are shown as stricken.
(Per Section 5-11-205, MCA)

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[SB 5]

AN ACT INCREASING THE FLEXIBILITY OF SCHOOL DISTRICTS IN ISSUING AND SELLING OBLIGATIONS TO THE BOARD OF INVESTMENTS; AMENDING SECTIONS 20-9-471 AND 20-9-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-471, MCA, is amended to read:

“20-9-471. Issuance of obligations – authorization – conditions.

(1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment *and construction of buildings used primarily for the storage and maintenance of vehicles and equipment*;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems, and cost-saving measures as defined in 90-4-1102;

(c) *the costs of nonpermanent modular classrooms necessary for student instruction when existing buildings of the district are determined to be inadequate by the trustees*;

(~~e~~)*(d)* any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(~~d~~)*(e)* the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed 15 fiscal years. For the purposes of this subsection, a “qualified energy project” means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) (a) At the time of issuing the obligation, there must exist an amount in the budget *of an applicable budgeted fund of the district* for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget *of an applicable budgeted fund of the district* for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(b) *For an obligation sold under subsection (1)(d) for the purposes of paying a tax protest refund, a district may pledge revenue from a special tax protest refund levy for the repayment of the obligation, pursuant to 15-1-402(7).*

(4) Except as provided in 20-9-502 ~~and~~, 20-9-503, *and subsections (1)(a) and (1)(c) of this section*, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

(a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;

(b) the 20% square footage limitation may not be exceeded within any 5-year period; and

(c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at an election held in accordance with all of

the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the guaranteed cost savings under energy performance contracts as defined in 90-4-1102.

(6) ~~The~~ *Except as provided in subsection (3)(b), the obligation must state clearly on its face that the obligation is not secured by a pledge of the school district's taxing power but is payable from amounts in its general fund or other legally available funds.*

(7) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(8) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and on any other terms and conditions that the trustees determine to be in the best interests of the district.

(9) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.”

Section 2. Section 20-9-503, MCA, is amended to read:

“20-9-503. Budgeting, tax levy, and use of building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include the authorized amount in the building reserve fund of the final budget. The county superintendent shall report the amount as the building reserve fund levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund may:

(a) pledge the revenue ~~for loans~~ from the building reserve fund levy for up to ~~5~~ 15 years. ~~However, loan proceeds may be to repay loans~~ used only for projects authorized by *the electors of the district pursuant to 20-9-502.*

(b) expend money from the fund for the purpose or purposes for which it was authorized without the specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to begin the authorized projects. The expenditures may not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest the money in accordance with 20-9-213(4). The interest earned from the investment must be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for the fund.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 8, 2017

CHAPTER NO. 2

[SB 13]

AN ACT CLARIFYING THE APPLICATION OF THE CODE OF ETHICS FOR THE EXECUTIVE SECRETARY OF THE BOARD OF HORSE RACING;

AMENDING SECTION 23-4-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-106, MCA, is amended to read:

“23-4-106. Executive secretary – powers and duties – staff – prohibition on racing activities. (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and *the provisions of Title 2, chapter 2, and this chapter*, shall:

- (a) supervise race meets and activities of racing officials;
- (b) hire all state racing officials for the department;
- (c) inspect race facilities;
- (d) prescribe the duties and salary of state stewards; and
- (e) perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist in the performance of the executive secretary’s duties.

(4) The executive secretary, a staff member, and any member of the executive secretary’s or a staff member’s immediate family are prohibited from owning, training, or having any interest in a racehorse or mule running on a Montana track or having any financial interest in any Montana racing association. A racing official hired by the department or approved by the board may not wager at a race meet at which the racing official presides.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 8, 2017

CHAPTER NO. 3

[SB 70]

AN ACT ADDING A MEMBER TO THE BOARD OF OPTOMETRY; AMENDING SECTION 2-15-1736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1736, MCA, is amended to read:

“2-15-1736. Board of optometry. (1) There is a board of optometry.

(2) The board consists of ~~four~~ *five* members appointed by the governor with the consent of the senate. ~~Three~~ *Four* members must be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) Members shall serve staggered 4-year terms.

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

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 8, 2017

CHAPTER NO. 4

[HB 16]

AN ACT PROVIDING THE ECONOMIC AFFAIRS INTERIM COMMITTEE WITH REVIEW AUTHORITY OVER THE MONTANA ALCOHOLIC

BEVERAGE CODE; AMENDING SECTIONS 5-5-223 AND 5-5-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-223, MCA, is amended to read:

“5-5-223. Economic affairs interim committee. (1) The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) department of agriculture;
- (b) department of commerce;
- (c) department of labor and industry;
- (d) department of livestock;
- (e) office of the state auditor and insurance commissioner;
- (f) office of economic development;

(g) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; ~~and~~

(h) the division of banking and financial institutions provided for in 32-1-211; *and*

(i) *the division of the department of revenue that administers the Montana Alcoholic Beverage Code.*

(2) The state compensation insurance fund shall annually provide to the committee a report on its budget as approved by the state compensation insurance fund board of directors.”

Section 2. Section 5-5-227, MCA, is amended to read:

“5-5-227. Revenue and transportation interim committee – powers and duties – revenue estimating and use of estimates. (1) The revenue and transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for *the state tax appeal board established in 2-15-1015 and for the department of revenue and the department of transportation, for and the entities attached to the departments for administrative purposes, except the division of the department of revenue that administers the Montana Alcoholic Beverage Code and for the state tax appeal board established in 2-15-1015.*

(2) (a) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.

(3) The committee’s estimate, as introduced in the legislature, constitutes the legislature’s current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature’s estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of

revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 13, 2017

CHAPTER NO. 5

[HB 25]

AN ACT REVISING THE REPORTING REQUIREMENT REGARDING BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS; AND AMENDING SECTION 32-11-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-11-306, MCA, is amended to read:

“32-11-306. Information on economic development effect. Each year *in which a person is licensed under this chapter*, the department shall publish and provide to the legislature information on the effect of this chapter on promoting economic development in the state. The information must include aggregate statistics on:

(1) the number and dollar amount of the financing assistance made by licensees to businesses. The amounts must be organized into broad categories based on the types of industry involved. The North American Industry Classification System Manual may be used for the categories.

(2) the number and dollar amount of the financing assistance made by licensees to minority-owned businesses and to businesses owned by women; and

(3) estimates of the number of jobs created or retained.”

Approved February 13, 2017

CHAPTER NO. 6

[HB 42]

AN ACT REVISING THE FILING DEADLINE FOR PARTNERSHIPS TO ALIGN WITH THE FEDERAL FILING DEADLINE; AMENDING SECTION 15-30-3302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-3302, MCA, is amended to read:

“15-30-3302. Income or license tax involving pass-through entities – information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to

the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C. 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

(5) (a) Subject to the due date provision in 15-30-2604(1)(b), a partnership that has Montana source income shall on or before the 15th day of the ~~4th~~ 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security *number* or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) Subject to the due date provision in 15-30-2604(1)(b), an S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security *number* or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security *number* or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (5)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The penalty may not exceed \$2,500 for any one tax period. The department may waive the penalty imposed by this subsection (5)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016.

Approved February 13, 2017

CHAPTER NO. 7

[HB 74]

AN ACT CLARIFYING AMENDMENTS TO PROPERTY TAX LAWS ENACTED BY THE 64TH LEGISLATURE; AND AMENDING SECTIONS 15-6-301, 15-6-302, 15-6-305, 15-6-311, AND 15-7-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-301, MCA, is amended to read:

"15-6-301. Definitions. As used in this part, the following definitions apply:

(1) "Annual verification" means the use of a process to:

(a) verify an applicant's income;

(b) approve, renew, or deny benefits for the current year based upon the applicant's eligibility; and

(c) terminate participation based upon death or loss of status as a qualified veteran or veteran's spouse.

(2) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce.

(3) "PCE inflation factor" for a tax year means the PCE for April of the prior tax year before the tax year divided by the PCE for April 2015.

(4) (a) "Primary residence" is, subject to the provisions of subsection (4)(b), a dwelling:

(i) in which a taxpayer can demonstrate the taxpayer lived for at least 7 months of the year for which benefits are claimed;

(ii) that is the only residence for which property tax assistance is claimed; and

(iii) determined using the indicators provided for in the rules authorized by 15-6-302(2).

(b) A primary residence may include more than one dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year

and another dwelling for less than 7 months of the same tax year, but lives in the dwellings for more than 7 months of the tax year.

(5) "Qualified veteran" means a veteran:

(a) who was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; and

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs.

(6) "Qualifying income" means:

(a) the federal adjusted gross income excluding capital and income losses of an applicant and the applicant's spouse as calculated on the Montana income tax return for the prior year;

(b) for assistance under ~~15-6-305~~ ~~[15-6-311]~~ 15-6-311, the federal adjusted gross income excluding capital and income losses of an applicant as calculated on the Montana income tax return for the prior tax year; or

(c) for an applicant who is not required to file a Montana income tax return, the income determined using available income information.

(7) "Residential real property" means the land and improvements of a taxpayer's primary residence."

Section 2. Section 15-6-302, MCA, is amended to read:

"15-6-302. Property tax assistance – rulemaking. (1) The requirements of this section must be met for a taxpayer to qualify for property tax assistance under 15-6-305 or 15-6-311.

(2) For the property tax assistance programs provided for in 15-6-305 and 15-6-311, the residential real property must be owned by the applicant or under contract for deed and be the primary residence as defined in 15-6-301. The department shall make rules specifying the indicators used for determining whether a residence is a primary residence for purposes of property tax assistance programs.

(3) An applicant's qualifying income, as defined in 15-6-301, may not exceed the threshold established in 15-6-305 or 15-6-311 or in rules established pursuant to those sections.

(4) (a) A claim for assistance must be submitted on a form prescribed by the department.

(b) The form must contain:

(i) the qualifying income of the applicant and the applicant's spouse;

(ii) an affirmation that the applicant owns and maintains the land and improvements as the primary residence as defined in 15-6-301;

(iii) the social security number of the applicant and of the applicant's spouse; and

(iv) any other information required by the department that is relevant to the applicant's eligibility.

(5) (a) An application must be filed by April 15 of the year for which assistance is first claimed.

(b) Once assistance is approved, the applicant remains eligible for property tax assistance in subsequent years through the annual verification process defined in 15-6-301 without the need to reapply.

(c) ~~Applicants and participants in the property tax assistance program provided for in [former] 15-6-134(1)(c) and the disabled or deceased veterans program provided for in [former] 15-6-211 as those sections existed on~~

~~December 31, 2014, must be included in the annual verification process and are not required to submit a new application.~~

(d)(c) A taxpayer shall inform the department of any change in eligibility occurring from one year to the next.

(6) The department may verify an applicant’s and an applicant’s spouse’s social security number and benefits with the social security administration and the U.S. department of veterans affairs.

(7) The department must annually verify an applicant’s eligibility, including the applicant’s and spouse’s income, and approve, renew, or deny benefits for the current year based upon the findings.

(8) (a) When providing information for property tax assistance under 15-6-305 or 15-6-311, applicants are subject to the false swearing penalties established in 45-7-202.

(b) The department may investigate the information provided in an application and an applicant’s continued eligibility.

(c) The department may request applicant verification of the primary residence.

(9) The department may address unusual circumstances of ownership and income that arise in administering taxpayer assistance programs provided for in 15-6-305 and 15-6-311.

(10) A temporary stay in a nursing home or similar facility does not change a taxpayer’s primary residence for the purposes of taxpayer assistance programs provided for in 15-6-305 and 15-6-311.

(11) The department shall award property assistance under the property tax assistance program that provides the greatest benefit to the taxpayer by reviewing applications and eligibility requirements, and notify the applicant of the department’s decision.”

Section 3. Section 15-6-305, MCA, is amended to read:

“15-6-305. Property tax assistance program – fixed or limited income. (1) There is a property tax assistance program that provides graduated levels of tax assistance for the purpose of assisting citizens with limited or fixed incomes. To be eligible for the program, applicants must meet the requirements of 15-6-302.

(2) The first \$200,000 in appraisal value of residential real property qualifying for the property tax assistance program is taxed at the rates established by 15-6-134(2) multiplied by a percentage figure based on the applicant’s qualifying income determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$8,413	\$0 - \$11,217	20%
\$8,414 - \$12,900	\$11,218 - \$19,630	50%
\$12,901 - \$21,032	\$19,631 - \$28,043	70%

(3) The qualifying income levels contained in subsection (2) must be adjusted annually using the PCE inflation factor defined in 15-6-301, rounded to the nearest whole dollar amount.”

Section 4. Section 15-6-311, MCA, is amended to read:

“15-6-311. Disabled veteran program. (1) The residential real property of a qualified veteran or a qualified veteran’s spouse is eligible to receive a tax rate reduction as provided in ~~15-6-305 [15-6-302]~~ 15-6-302 and this section.

(2) Property qualifying under subsection (1) and owned by a qualified veteran is taxed at the rate provided in 15-6-134 multiplied by a percentage

figure based on the applicant's qualifying income determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$37,404	\$0 - \$44,885	0%
\$37,405 - \$41,145	\$44,886 - \$48,626	20%
\$41,146 - \$44,885	\$48,627 - \$52,366	30%
\$44,886 - \$48,626	\$52,367 - \$56,107	50%

(3) For a surviving spouse who owns property qualifying under subsection (4), the property is taxed at the rate established by 15-6-134 multiplied by a percentage figure based on the spouse's qualifying income determined from the following table:

Income Surviving Spouse	Percentage Multiplier
\$0 - \$31,170	0%
\$31,171 - \$34,911	20%
\$34,912 - \$38,651	30%
\$38,652 - \$42,392	50%

(4) The property tax exemption under this section remains in effect as long as the qualifying income requirements are met and the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

- (a) is the owner and occupant of the house;
- (b) is unmarried; and

(c) has obtained from the U.S. department of veterans affairs a letter indicating that the veteran was rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

(5) The qualifying income levels contained in subsections (2) and (3) must be adjusted annually by using the PCE inflation factor defined in 15-6-301, rounded to the nearest whole dollar amount."

Section 5. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification, market value, and taxable value to owners – appeals. (1) (a) Except as provided in 15-7-138, the department shall mail or provide electronically to each owner or purchaser under contract for deed a notice that includes the land classification, market value, and taxable value of the land and improvements owned or being purchased. A notice must be mailed to the owner only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) The notice must include the following for the taxpayer's informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance programs provided for in Title 15, chapter 6, part 3, and the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(c) When the department uses an appraisal method that values land and improvements as a unit, including the sales comparison approach for residential condominiums or the income approach for commercial property, the notice must contain a combined appraised value of land and improvements.

(d) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail or provide electronically the notice in written or electronic form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail or provide electronically the notice to a new owner or purchaser under contract for deed unless the department has received the realty transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed or provided electronically. The department shall notify the county tax appeal board of the date of the mailing or the date when the taxpayer is informed the information is available electronically.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection on written or electronic forms provided by the department for that purpose.

(i) For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days from the date on the notice.

(ii) For class three property described in 15-6-133 and class four property described in 15-6-134, the objection may be made only once each valuation cycle. An objection must be made within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for both years of the 2-year appraisal cycle. Any reduction in value resulting from an objection made more than 30 days from the date of the assessment notice will be applicable only for the second year of the 2-year reappraisal cycle.

(iii) For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. Any reduction in value resulting from an objection made more than 30 days after the date of the assessment notice applies only for the subsequent remaining years of the 6-year reappraisal cycle.

(b) If the objection relates to residential or commercial property and the objector agrees to the confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within 8 weeks of submission of the objection, the following information:

(i) the methodology and sources of data used by the department in the valuation of the property; and

(ii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) At the request of the objector, and only if the objector signs a written or electronic confidentiality agreement, the department shall provide in written or electronic form:

(i) comparable sales data used by the department to value the property; and

(ii) sales data used by the department to value residential property in the property taxpayer's market model area.

(d) For properties valued using the income approach as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.

(e) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. ~~The county tax appeal board [department]~~ *department* shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the department does not use the appraisal provided by the taxpayer in conducting the appeal, the department must provide to the taxpayer the reason for not using the appraisal. The department shall give reasonable notice to the taxpayer of the time and place of the review.

(f) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination by mail or electronically. The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property or data available for the property that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection on written or electronic forms provided by the department; and

(b) the department has provided to the objector by mail or electronically its stated reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to

the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Approved February 13, 2017

CHAPTER NO. 8

[HB 113]

AN ACT ALLOWING STATE FUNDS TO BE USED AS MATCHING FUNDS FOR INDIAN LANGUAGE IMMERSION PROGRAMS; AMENDING SECTION 20-7-1404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-1404, MCA, is amended to read:

"20-7-1404. (Temporary) Indian language immersion programs – funding – flexibility. (1) School districts are encouraged to create Indian language immersion programs and in doing so:

(a) collaborate with other school districts, the Montana digital academy, tribal governments, and tribal colleges;

(b) utilize materials produced in the Montana Indian language preservation pilot program pursuant to section 1, Chapter 410, Laws of 2013;

(c) utilize American Indian language and culture specialists as teachers of language and culture; and

(d) look to existing native language schools in Montana and around the world for guidance and best practices.

(2) In acknowledgment of Article X, section 1, of the Montana constitution, the educationally relevant factors for the school funding formula under 20-9-309(3), and the increased costs associated with language immersion programs, a district creating an Indian language immersion program is entitled to the following in addition to the school funding formula in Title 20, chapter 9:

(a) (i) subject to subsections (3) and (4), for every Indian student participating in an Indian language immersion program, an additional American Indian achievement gap payment, as calculated in 20-9-306, multiplied by 2; and

(ii) for every non-Indian student participating in an Indian language immersion program, an additional Indian education for all payment, as calculated in 20-9-306, multiplied by 2; and

(b) for every full-time American Indian language and culture specialist teaching in an Indian language immersion program, a quality educator payment as calculated in 20-9-306.

(3) For a district operating an Indian language immersion program that improves the district's graduation rate for American Indians by 5 percentage points or more from the previous year as measured by the office of public instruction, the multiplier in subsection (2)(a)(i) must be increased to 3.

(4) If the money appropriated for Indian [language] immersion programs is insufficient to provide the amounts in subsections (2) and (3), the office of public instruction shall prorate the payments accordingly.

(5) The board of public education is encouraged to approve proposed variances to standards of accreditation for Indian language immersion programs when the board finds the proposal to be educationally sound and in alignment with the purpose described in 20-7-1402(2).

(6) The cultural and intellectual property rights from materials developed for an Indian language immersion program belong to the tribe to which the materials relate. Use of the cultural and intellectual property outside of the Indian language immersion program may be negotiated with the tribe.

(7) *A district may use payments received pursuant to this section as matching funds for federal or private fund sources to accomplish the purposes of this part. (Terminates June 30, 2019--sec. 10, Ch. 442, L. 2015.)*

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved February 13, 2017

CHAPTER NO. 9

[HB 120]

AN ACT REVISING LAWS PERTAINING TO THE INSURANCE COMMISSIONER'S REGULATION OF INSURERS; CREATING THE CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT; PROVIDING FOR A LATE FILING PENALTY; ADDING RISK-BASED CAPITAL LAWS FOR HEALTH MAINTENANCE ORGANIZATIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-1-409, 33-2-1104, 33-2-1105, 33-2-1111, 33-2-1113, 33-2-1115, 33-2-1216, 33-2-1902, 33-2-1903, 33-2-1904, 33-2-1907, AND 33-2-1910, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Corporate Governance Annual Disclosure Act."

Section 2. Purpose – scope. (1) The purpose of [sections 1 through 9] is to:

(a) provide the insurance commissioner a summary of an insurer or insurance group's corporate governance structure, policies, and practices to permit the commissioner to gain and maintain an understanding of the insurer's corporate governance framework;

(b) outline the requirements for completing a corporate governance annual disclosure with the insurance commissioner; and

(c) provide for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(2) (a) Nothing in [sections 1 through 9] may be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law.

(b) Notwithstanding subsection (2)(a), nothing in [sections 1 through 9] may be construed to limit the commissioner's authority, or the rights or obligations of third parties, under Title 33.

(3) The requirements of [sections 1 through 9] apply to all insurers domiciled in the state.

Section 3. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Commissioner" means the insurance commissioner of the state of Montana.

(2) "CGAD" means a corporate governance annual disclosure, a confidential report filed by the insurer or insurance group made in accordance with the requirements of [sections 1 through 9].

(3) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in 33-2-1101.

(4) "Insurer" has the meaning provided in 33-1-201, except that it may not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) "NAIC" means the national association of insurance commissioners.

Section 4. Disclosure requirement. (1) An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the information described in [section 6]. Notwithstanding any request from the commissioner made pursuant to subsection (3), if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the financial analysis handbook adopted by rule by the commissioner.

(2) The CGAD must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee of the board of directors.

(3) An insurer not required to submit a CGAD under this section must do so upon the commissioner's request.

(4) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(5) The review of the CGAD and any additional requests for information shall be made through the lead state as determined by the procedures within the financial analysis handbook referenced in subsection (1).

(6) Insurers providing information substantially similar to the information required by [sections 1 through 9] in other documents provided to the commissioner, including a proxy statement filed in conjunction with form B requirements, or other state or federal filings provided to the commissioner may not be required to duplicate that information in the CGAD, but must only be required to cross-reference the document in which the information is included.

Section 5. Rulemaking authority. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders necessary to carry out the provisions of [sections 1 through 9].

Section 6. Contents of corporate governance annual disclosure. (1) The insurer or insurance group has discretion over the responses to the CGAD inquiries, provided the CGAD must contain the material information necessary to permit the commissioner to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices. The commissioner may request additional information that the commissioner deems material and necessary to provide a clear understanding of the corporate governance policies, the reporting or information system, or controls implementing those policies.

(2) Notwithstanding subsection (1), the CGAD must be prepared consistent with any rules adopted by the commissioner. Documentation and supporting information must be maintained and made available upon examination or upon request of the commissioner.

Section 7. Confidentiality. (1) Documents, materials, or other information including the CGAD, in the possession or control of the department of insurance that are obtained by, created by, or disclosed to the commissioner or any other person under [sections 1 through 9], are recognized by the state as being proprietary and to contain trade secrets. All such documents, materials, or other information is confidential by law and privileged, may not be subject to Title 2, chapter 6, part 10, may not be subject to subpoena, and may not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Nothing in this section may be construed to require written consent of the insurer before the commissioner may share or receive confidential documents, materials, or other CGAD-related information pursuant to subsection (3) to assist in the performance of the commissioner's regular duties.

(2) Neither the commissioner nor any person who receives documents, materials, or other CGAD-related information, through examination or otherwise, while acting under the authority of the commissioner, or with whom such documents, materials, or other information are shared pursuant to [sections 1 through 9] may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1).

(3) In order to assist in the performance of the commissioner's regular duties, the commissioner may:

(a) upon request, share documents, materials, or other CGAD-related information including the confidential and privileged documents, materials, or information subject to subsection (1), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as provided

in Title 33, chapter 2, part 11, with the NAIC and with third-party consultants pursuant to [section 8], provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material, or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) receive documents, materials, or other CGAD-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as provided in Title 33, chapter 2, part 11, and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The sharing of information and documents by the commissioner pursuant to [sections 1 through 9] may not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of [sections 1 through 9].

(5) A waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other CGAD-related information may not occur as a result of disclosure of such CGAD-related information or documents to the commissioner under this section or as a result of sharing as authorized in [sections 1 through 9].

Section 8. NAIC and third-party consultants. (1) The commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the CGAD and related information or the insurer's compliance with [sections 1 through 9].

(2) Any persons retained under subsection (1) must be under the direction and control of the commissioner and must act in a purely advisory capacity.

(3) The NAIC and third-party consultants must be subject to the same confidentiality standards and requirements of the commissioner.

(4) As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with the conflict and to comply with the confidentiality standards and requirements of [sections 1 through 9].

(5) A written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to [sections 1 through 9] must contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under [sections 1 through 9]:

(a) specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant pursuant to [sections 1 through 9];

(b) procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurers. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(c) a provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the department of insurance and the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;

(d) a provision that prohibits the NAIC or third-party consultant from storing the information shared pursuant to [sections 1 through 9] in a permanent database after the underlying analysis is completed;

(e) a provision requiring the NAIC or third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information; and

(f) a requirement that the NAIC or a third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to [sections 1 through 9].

Section 9. Sanctions – penalties. Any insurer failing, without just cause, to timely file the CGAD as required in [sections 1 through 9] must, after notice and hearing, pay a penalty of \$100 for each day's delay to the commissioner. The penalty must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. The maximum penalty under this section is \$1,000,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Section 10. Section 33-1-409, MCA, is amended to read:

“33-1-409. Examination reports – hearings – confidentiality – publication. (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) Not later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refile pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the production of documents considered relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days, except to the extent provided in subsection (2). After 30 days, the commissioner shall open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as

the agency or office receiving the report or matters relating to the report agrees *in writing* to hold it in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions as provided by law.

(6) (a) Working papers must be given confidential treatment, are not subject to subpoena, are not discoverable or admissible as evidence in any private action, and may not be made public by the commissioner or any other person except to the extent provided in 33-1-311(5) and subsection (5) of this section. Persons given access to working papers shall agree, prior to receiving the information, to treat the information in the manner required by this section unless prior written consent has been obtained from the company to which the working papers pertain.

(b) For purposes of subsection (6)(a), “working papers” means:

(i) all papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in the course of an examination or analysis by the commissioner;

(ii) confidential criminal justice information, as defined in 44-5-103;

(iii) personal information protected by an individual privacy interest; and

(iv) specifically identified trade secrets, as defined in 30-14-402, that have been obtained by or disclosed to the commissioner or any other person in the course of an examination made under this part for which there are reasonable grounds of privilege that are asserted by the party claiming the privilege.”

Section 11. Section 33-2-1104, MCA, is amended to read:

“33-2-1104. Acquisition or divestiture of control of or merger with domestic insurer – filing requisites. (1) (a) A person other than the issuer may not make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation of the transaction, the person would, directly or indirectly or by conversion or by exercise of any right to acquire, be in control of the insurer.

(b) A person may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any offer, request, or invitation is made or any agreement is entered into or prior to the acquisition of the securities if an offer or agreement is not involved, the person has filed with the commissioner and has sent to the insurer, and the insurer has sent to its shareholders, a statement as provided in subsection (3) containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.

(2) (a) A controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer in any manner shall file *a statement as provided in subsection (3) with the commissioner* for approval ~~a confidential notice~~ of its proposed divestiture at least 30 days prior to the cessation of control.

(b) The information in the notice must remain confidential until the conclusion of the transaction unless the commissioner, at the commissioner’s discretion, determines confidential treatment will interfere with enforcement of this section.

~~(c) Subsections (2)(a) and (2)(b) do not apply to persons filing a statement under subsection (1).~~

(3) The statement to be filed with the commissioner must be made under oath or affirmation and must contain the following:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected, who is called the “acquiring party”:

(i) if the person is an individual, the principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if the person is not an individual:

(A) a report of the nature of its business operations during the past 5 years or for a lesser period that the person and any predecessors have been in existence;

(B) an informative description of the business intended to be done by the person and the person’s subsidiaries; and

(C) a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to the positions. The list must include for each individual the information required by subsection (3)(a)(i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any purpose, and the identity of persons furnishing the consideration, provided that when a source of consideration is a loan made in the lender’s ordinary course of business, the identity of the lender must remain confidential if the person filing the statement requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals that each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (1) that each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (1) that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (1) by an acquiring party during the 12 calendar months preceding the filing of the statement, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security;

(i) a description of any recommendations to purchase any security referred to in subsection (1) during the 12 calendar months preceding the filing of the

statement made by any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) and, if distributed, of additional soliciting material relating to the offers or agreements;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to the solicitation;

(l) an agreement by which the person required to file the statement referred to in subsection (1) agrees to provide the annual enterprise risk report for as long as control exists;

(m) an acknowledgment by the person required to file the statement referred to in subsection (1) that the person and all affiliates within its control in the insurance holding company system agree to provide information to the commissioner upon request if the commissioner determines the information is necessary to evaluate enterprise risk to the insurer; and

(n) additional information that the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(4) If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (3) must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information required by subsection (3) be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(5) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment describing the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the insurer within 2 business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

(6) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may use the documents in furnishing the information called for by that statement.

(7) As used in this section:

(a) "domestic insurer" includes any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in a business other than the business of insurance;

(b) "person" does not include a securities broker holding, in the usual and customary broker's function, less than 20% of the voting securities of an insurance company or of any person who controls an insurance company."

Section 12. Section 33-2-1105, MCA, is amended to read:

“33-2-1105. Approval by commissioner – hearings – notice. (1) The commissioner shall approve any merger or other acquisition or divestiture of control referred to in 33-2-1104 unless, after a public hearing, the commissioner finds that:

(a) after the change of control, the domestic insurer referred to in 33-2-1104 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which the domestic insurer is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of the insurer's policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104 are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals that the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are of the nature that the change in control would not be in the interest of policyholders of the insurer and of the public; or

(g) *the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.*

(2) The public hearing referred to in subsection (1) must be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 days' notice of the hearing must be given by the commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and to conduct discovery proceedings in the same manner that is presently allowed in the district court of this state. All discovery proceedings must be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to 33-2-1104(1) through (5) and all notices of public hearings held pursuant to subsection (1) of this section must be mailed by the insurer to its shareholders within 5 business days after the insurer has received the statements, amendments, other material, or notices. The expenses of mailing must be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(4) The commissioner may retain at the expense of the acquiring or divesting party any attorneys, actuaries, accountants, and other experts not

otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."

Section 13. Section 33-2-1111, MCA, is amended to read:

"33-2-1111. Registration of insurers -- requisites -- termination.

(1) (a) An insurer authorized to do business in this state that is a member of an insurance holding company system shall register with the commissioner, except that a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section is not required to register.

(b) Any insurer subject to registration under this section shall register within 15 days after becoming subject to registration, unless the commissioner for good cause extends the time for registration.

(c) The commissioner may require any authorized insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority in the jurisdiction where the company is domiciled.

(2) An insurer subject to registration shall file with the commissioner, on or before April 30 each year, a registration statement on a form provided by the commissioner that must contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity *and relationship* of every member of the insurance holding company system;

(c) ~~existing relationships~~; transactions currently outstanding *or which occurred during the last calendar year* between the insurer and its affiliates; and the following agreements that are in force:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) management and service contracts and cost-sharing arrangements;

(vi) reinsurance agreements ~~covering all or substantially all of one or more lines of insurance of the ceding company~~;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

(d) a pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding company system;

(e) *if requested by the commissioner, financial statements of or within an insurance holding company system, including all affiliates, which may include annual audited financial statements filed with the U.S. securities and exchange commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or the most recently filed parent corporation financial statements filed with the U.S. securities and exchange commission;*

(f) *statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;*

(e)(g) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in registration forms adopted or approved by the commissioner; and

(h) any other information required by the commissioner by rule.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

(4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less of an insurer's admitted assets as of the prior December 31 are not material for purposes of this section.

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which the registered insurer learns of each change or addition.

(7) The ultimate controlling person of every insurer subject to registration under this section shall also file an annual enterprise risk report. The report must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer to the best of the controlling person's knowledge and belief. The report must be filed with the ~~insurance regulator in the state in which the insurance holding company system is domiciled~~, lead state commissioner of the insurance holding company system, as determined by the procedures within the financial analysis handbook ~~adopted by the NAIC adopted by rule of the commissioner~~.

(8) The commissioner shall terminate the registration of any insurer that demonstrates that the insurer no longer is a member of an insurance holding company system.

(9) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(10) The commissioner may allow an insurer that is authorized to do business in this state and that is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

Section 14. Section 33-2-1113, MCA, is amended to read:

"33-2-1113. Transactions with affiliates – standards. (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions, including

any accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system, *including amendments or modifications to affiliate agreements previously filed under this section*, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction ~~and the commissioner has not disapproved the transaction~~ within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit, *and the commissioner does not disapprove the transaction*:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if the transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(iii) *reinsurance agreements or modifications to reinsurance agreements, including any of the following arrangements in which the projected reinsurance premium or a change in any of the next 3 years in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31*:

(A) reinsurance pooling agreements;

(B) ~~reinsurance agreements; agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next 3 years, equals or exceeds 5% of the insurer's surplus regarding policyholders, as of the prior December 31; and~~

(C) ~~reinsurance modification to reinsurance agreements; or~~

~~(D)~~(C) those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) all management agreements, service contracts, tax allocation agreements, guarantees, and cost-sharing arrangements; ~~and~~

(v) *direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds 2.5% of the insurer's surplus to policyholders; and*

~~(v)~~(vi) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, the commissioner may exercise authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether the transaction may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs, the following factors, among others, must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in affiliates made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants."

Section 15. Section 33-2-1115, MCA, is amended to read:

"33-2-1115. Examination. (1) (a) In addition to the powers under Title 33, chapter 1, part 4, relating to the examination of insurers, the commissioner also has the power to order any insurer registered under 33-2-1111 to produce the records, books, or other information papers in the possession of the insurer or its affiliates that the commissioner determines are necessary to ascertain the financial condition or legality of conduct of the insurer.

(b) The information that the commissioner may request under subsection (1)(a) includes information necessary to ascertain the enterprise risk to the insurer by the ultimate controlling party or by any entity or combination of entities within the insurance holding company system or by the insurance holding company system on a consolidated basis.

(c) If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff that may be reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons retained are under the direction and control of the commissioner and are retained to act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) is liable for and shall pay the expense of the examination.

(4) In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information.

(5) Nothing in this section limits the authority of the commissioner under sections 33-1-315 through 33-1-318 to issue subpoenas, administer oaths, examine under oath any person, compel testimony, issue penalties, or seek injunctions or other remedies to determine and ensure compliance with this section."

Section 16. Section 33-2-1216, MCA, is amended to read:

"33-2-1216. Credit allowed domestic ceding insurer. (1) Credit for reinsurance is allowed to a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). Credit must be allowed under subsection (2), (3), or (4) only in respect to cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which the branch of the alien assuming insurer entered and is licensed to transact insurance or reinsurance. If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) demonstrates to the satisfaction of the commissioner that the accredited reinsurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer meets this requirement as of the time of its application if:

(i) the assuming accredited reinsurer maintains a surplus as regards policyholders in an amount not less than \$20 million; and

(ii) the commissioner approves its accreditation within 90 days after the date that the accredited reinsurer submits its application.

(4) (a) Subject to subsection (4)(b), credit must be allowed when:

(i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and

(ii) the assuming insurer or the United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and

(B) submits to the authority of this state to examine its books and records.

(b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the commissioner and shall bear the expense of examination.

(b) (i) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a surplus with the trustee of not less than \$20 million, except as provided in subsection (5)(b)(ii).

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the insurance regulator with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus after a finding that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows. The risk assessment must consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(iii) In the case of a group, including incorporated and individual unincorporated underwriters, the trust must consist of a trusteed account representing the respective underwriters' liabilities attributable to business written in the United States to any underwriter of the group. Additionally, the group shall maintain a surplus with the trustee of which \$100 million must be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group, as group members, may not be engaged in a business other than underwriting as members of the group and are subject to the same level of solvency regulation and control by the insurance regulator as the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

(iv) In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection (5)(b)(iv)(B) apply to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's authority to examine its books and records and bears the expense of the examination; and

(IV) has aggregate policyholders' surplus of \$10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(II) the group shall maintain a joint surplus with a trustee of which \$100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (5)(c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(e) (i) The commissioner shall allow credit when the reinsurance is ceded to an assuming insurer that the commissioner has certified as a reinsurer in this state and secures its obligation in accordance with the requirements of *this* subsection (5)(e)(~~ii~~) or (5)(e)(~~iii~~).

(ii) To be eligible for certification under this subsection (5)(e)(~~ii~~), an assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction as determined by the commissioner pursuant to subsection (5)(e)(iv) and shall:

(A) maintain minimum capital and surplus or its equivalent as promulgated by the commissioner by rule;

(B) maintain financial strength ratings from two or more rating agencies, as determined by the commissioner;

(C) agree to the jurisdiction of this state;

(D) appoint the commissioner as its agent for service of process in this state;

(E) agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment from within the United States;

(F) agree to meet applicable information filing requirements as determined by the commissioner; and

(G) satisfy any other requirements for certification considered relevant by the commissioner.

(iii) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. The incorporated members of the association may not engage in any business other than underwriting as a member of the association. The incorporated members are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members. In order to be eligible for certification under this subsection (5)(e)(iii), the association shall satisfy the requirements of subsection (5)(e)(ii) and shall:

(A) satisfy its minimum capital and surplus requirements through the capital and surplus equivalents as a net of liabilities of the association and its members. This provision must include use of a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in an amount that provides adequate protection as determined by the commissioner.

(B) provide to the commissioner, within 90 days of the date its financial statements are due to be filed with the association's domiciliary regulator, an annual certification by the association's domiciliary regulator of the solvency of each underwriter member. If a certification is unavailable, the association may provide a financial statement prepared by independent public accountants of each underwriter member.

(iv) The commissioner shall create, maintain, and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification as a certified reinsurer. The commissioner shall certify all United States jurisdictions as long as those jurisdictions are accredited under the NAIC financial standards and accreditation program. For jurisdictions not in the United States, the commissioner may defer to a list of qualified jurisdictions published by the NAIC or, if the commissioner does not defer to the NAIC list, shall develop a list of qualified jurisdictions by considering:

(A) the reinsurance supervisory system of the jurisdiction;

(B) the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled within the United States;

(C) whether an NAIC-accredited jurisdiction has certified the reinsurer; and

(D) any additional factors the commissioner considers relevant.

(v) *if the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published by the NAIC, the commissioner shall provide thoroughly documented justification in accordance with the criteria listed under subsection (5)(e)(iv).*

(vi) Qualified jurisdictions under subsection (5)(e)(iv) shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

(vii) The commissioner may not approve a jurisdiction not in the United States if the commissioner determines that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.

(viii) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may either suspend the reinsurer's certification indefinitely or revoke the certification entirely.

(ix) The commissioner shall assign a rating to each certified ~~insurer~~ reinsurer. In assigning a rating, the commissioner shall consider the financial

strength ratings assigned by agencies approved by the commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings. The commissioner may defer to a rating assigned by a jurisdiction accredited by the NAIC.

~~(ix)(x)~~ A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection ~~(5)(e)(ix)~~ at a level consistent with the certified reinsurer's rating. A domestic ceding insurer qualifies for full financial statement credit for reinsurance ceded to a certified reinsurer if ~~the domestic ceding insurer~~ *the certified reinsurer*:

(A) maintains security in a form acceptable to the commissioner and in accord with the provisions of this section; or

(B) forms a multibeneficiary trust in accord with subsections (5)(a) through (5)(d), except that minimum trustee surplus requirements as provided in subsection (5)(b) do not apply with respect to a multibeneficiary trust account maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection ~~(5)(e)(ix)~~ (5)(e)(x). A multibeneficiary trust under this subsection ~~(5)(e)(ix)(B)~~ (5)(e)(x)(B) must be maintained with a minimum trustee surplus of \$10 million.

~~(x)(xi)~~ A certified reinsurer operating under subsection ~~(5)(e)(ix)(B)~~ (5)(e)(x)(B) shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection (5)(e) or comparable laws of other United States jurisdictions.

~~(xi)(xii)~~ If obligations incurred by a certified reinsurer under this subsection (5)(e) lack sufficient security, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The commissioner may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

~~(xii)(xiii)~~ For the purposes of this subsection (5)(e), a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations. If the commissioner assigns a higher rating to a certified reinsurer on inactive status pursuant to this subsection ~~(5)(e)(xii)~~ (5)(e)(xiii), this subsection ~~(5)(e)(xii)~~ (5)(e)(xiii) does not apply. As used in this subsection ~~(5)(e)(xii)~~ (5)(e)(xiii), "terminated" refers to a reinsurer whose certificate of authority has been revoked, suspended, voluntarily surrendered, or put on inactive status.

~~(xiii)(xiv)~~ A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection (5)(e), and the commissioner shall assign a rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection (2), (3), (4), or (5), but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements to the following provisions:

(i) upon the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall:

(A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) the assuming insurer shall designate the commissioner or a designated attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

(8) (a) If the assuming insurer does not meet the requirements of subsection (1), (2), or (3), the credit permitted by subsection (4) or (5) may not be allowed unless the assuming insurer agrees in the trust agreements to the conditions under subsections (8)(b) through (8)(d).

(b) Regardless of any other provisions in the trust instrument, the trustee shall comply with an order of the commissioner or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner all assets of the trust fund if:

(i) the trust fund is inadequate because the trust fund contains an amount less than the required amount; or

(ii) the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings.

(c) The assets transferred under subsection (8)(a) must be distributed by the commissioner. Claims must be filed with and valued by the commissioner in accordance with the laws of the state in which the trust is domiciled and that apply to the liquidation of domestic insurers.

(d) The commissioner may determine that the assets of the trust fund or any part of the trust fund assets are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust. If the commissioner makes this determination, the commissioner shall return the assets or part of the assets to the trustee for distribution in accordance with the trust agreement.

(9) (a) The commissioner may suspend or revoke a reinsurer's accreditation or certification if the reinsurer ceases to meet the requirements of this section. The commissioner shall give the reinsurer notice and opportunity for a hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing unless:

(i) the reinsurer waives its right to a hearing;

(ii) the commissioner's order is based on:

(A) regulatory action by the reinsurer's domiciliary jurisdiction; or

(B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction; or

(iii) the commissioner finds that an emergency requires immediate action.

(b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit under this section except to the extent that the reinsurer's obligations under the contract are secured in accordance with this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent

that the reinsurer's obligations under the contract are secured in accordance with 33-2-1217 and subsection ~~(5)(e)(ix)~~ (5)(e)(x) of this section.

(10) (a) A ceding insurer shall take steps:

(i) to manage the reinsurance recoverables proportionate to the ceding insurer's own book of business. A domestic ceding insurer shall provide notice to the commissioner within 30 days after:

(A) the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

(B) a determination that the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers is likely to exceed the limit in subsection (10)(a)(i)(A).

(ii) to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20% of the ceding insurer's gross written premium in the prior calendar year or after the domestic ceding insurer has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed the 20% limit.

(b) The notifications made pursuant to this subsection (10) must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(11) A reinsurance contract issued or renewed after the effective date of a suspension or revocation does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with this section."

Section 17. Section 33-2-1902, MCA, is amended to read:

"33-2-1902. Definitions. As used in this part, the following definitions apply:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with ~~33-2-1903(5)~~ 33-2-1903(6).

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic insurer" means any insurance company or health organization domiciled in this state.

(4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-116 but not domiciled in this state, or a health organization licensed to do business in this state under Title 33, chapter 31, but not domiciled in this state.

(5) "Health organization" means a health maintenance organization or other managed care organization licensed under Title 33, chapter 31. This definition does not include an organization licensed as either a life or disability insurer or a property and casualty insurer, or that is otherwise subject to either the life and health or the property and casualty RBC requirements.

(6) "Insurer" includes life or other disability insurers, property and casualty insurers, and health organizations.

~~(5)~~(7) "Life or disability insurer" means:

(a) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208;

(b) a licensed property and casualty insurer writing only disability insurance;

(c) any insurer engaged solely in the business of reinsurance of life or disability contracts;

(d) a fraternal benefit society formed under Title 33, chapter 7; or

(e) a health service corporation formed under Title 33, chapter 30.

~~(6)~~(8) "NAIC" means the national association of insurance commissioners.

~~(7)~~(9) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

~~(8)~~(10) (a) "Property and casualty insurer" means:

(i) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

(ii) any insurance company engaged solely in the business of reinsurance of property and casualty contracts; or

(iii) any insurance company engaged in the business of surety and marine insurance.

(b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

~~(9)~~(11) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

~~(10)~~(12) "RBC level" means an insurer's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC, in which:

(a) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) (i) "company action level RBC" means, with respect to any insurer except the state fund as provided in subsection ~~(10)~~(b)(ii) (12)(b)(ii), the product of 2 and its authorized control level RBC;

(ii) "company action level RBC" for the state fund is the product of 4 and its authorized control level RBC;

(c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC; and

(d) (i) "regulatory action level RBC" means, except for the state fund as provided in subsection ~~(10)~~(d)(ii) (12)(d)(ii), the product of 1.5 and its authorized control level RBC;

(ii) "regulatory action level RBC" for the state fund is the product of 3 and its authorized control level RBC.

~~(11)~~(13) "RBC plan" means a comprehensive financial plan containing the elements specified in 33-2-1904(2). If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called a revised RBC plan.

~~(12)~~(14) "RBC report" means the report required in 33-2-1903.

~~(13)~~(15) "Total adjusted capital" means the sum of:

(a) an insurer's statutory capital and surplus; and

(b) other items, if any, as the RBC instructions may provide."

Section 18. Section 33-2-1903, MCA, is amended to read:

"33-2-1903. RBC reports. (1) Each domestic insurer shall, on or before each March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing information as required by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(a) with the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business if that insurance commissioner has notified the

insurer of the request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) 15 days from the receipt of notice to file its RBC report with that state; or

(ii) the March 1 filing date.

(2) A life and disability insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may adjust for the covariance between:

(a) the risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and other relevant risks as are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may be adjusted for the covariance between:

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and other relevant risks set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) *A health organization's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may be adjusted for the covariance between:*

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and other relevant risks set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

~~(4)~~(5) An excess of capital over the amount produced by the risk-based capital requirements contained in this part and the formulas, schedules, and instructions referenced in 33-2-1906 through 33-2-1913 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this part. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this part.

~~(5)~~(6) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An RBC report adjusted as provided in this subsection is referred to as an adjusted RBC report."

Section 19. Section 33-2-1904, MCA, is amended to read:

"33-2-1904. Company action level event. (1) "Company action level event" means any of the following events:

(a) the filing of an RBC report by an insurer indicating that:

(i) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(ii) for a life or disability insurer, the insurer has total adjusted capital that:
(A) is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by 3; and

(B) has a negative trend; or

(iii) for a property and casualty insurer, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by 3; and

(B) triggers the trend test determined in accordance with the trend test calculation included in the RBC instructions; or

(iv) for a health organization, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by 3; and

(B) triggers the trend test determined in accordance with the trend test calculation included in the health RBC instructions;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or if the commissioner has rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that must:

(a) identify the conditions that contribute to the company action level event;

(b) contain proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event;

(c) provide projections of the insurer's financial results in the current year and at least the next 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(d) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of and problems associated with the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan must be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer challenges an adjusted RBC report pursuant to 33-2-1908, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within 60 days after an insurer submits an RBC plan to the commissioner, the commissioner shall notify the insurer as to whether the RBC plan may be implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may propose revisions intended to render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) within 45 days after the notification from the commissioner; or
(b) if the insurer challenges the notification from the commissioner under 33-2-1908, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) If the commissioner notifies an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under 33-2-1908, specify in the notification that the notification constitutes a regulatory action level event.

(6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) the state has an RBC provision substantially similar to 33-2-1909(1); and

(b) the insurance commissioner of that state has notified the insurer in writing of its request for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4)."

Section 20. Section 33-2-1907, MCA, is amended to read:

"33-2-1907. Mandatory control level event. (1) "Mandatory control level event" means any of the following events:

(a) the filing of an RBC report that indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or the commissioner rejects the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) with respect to a life or *disability* insurer or a *health organization*, the commissioner shall take the actions that are necessary to place the insurer under regulatory control under Title 33, chapter 2, part 13. In that event, the mandatory control level event must be considered sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds that there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

(b) with respect to a property and casualty insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under Title 33, chapter 2, part 13, or, in the case of an insurer that is not writing business and that is running-off its existing business, may allow the insurer to continue its runoff under the supervision of the commissioner. In either event, the mandatory control level event must be considered sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner

takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.”

Section 21. Section 33-2-1910, MCA, is amended to read:

“33-2-1910. Supplemental provisions – rules – exemption. (1) The provisions of this part are supplemental to any other provisions of the laws of this state and do not preclude or limit any other powers or duties of the commissioner under the law, including but not limited to Title 33, chapter 2, part 13.

(2) The commissioner may adopt reasonable rules necessary for the implementation of this part.

(3) The commissioner may exempt from the application of this part any domestic property and casualty insurer that:

(a) writes direct business only in this state;

(b) writes direct annual premiums of \$2 million or less; and

(c) does not assume reinsurance in excess of 5% of direct premium written.

(4) *The commissioner may exempt from the application of this part any domestic health organization that:*

(a) *writes direct business only in this state;*

(b) *assumes no reinsurance in excess of 5% of direct premium written;*

(c) *writes direct annual premiums for comprehensive medical business of \$1 million or less; and*

(d) *is a limited health service organization that covers less than 1,000 lives.”*

Section 22. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 9].

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2017.

(2) [Sections 1 through 9] are effective January 1, 2018.

Approved February 13, 2017

CHAPTER NO. 10

[HB 132]

AN ACT CLARIFYING THE APPEALS PROCESS FOR UNEMPLOYMENT INSURANCE CLAIMS; AND AMENDING SECTIONS 39-51-2404 AND 39-51-2410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2404, MCA, is amended to read:

“39-51-2404. Appeal to board procedure. An interested party who is dissatisfied with a decision of an appeals referee may appeal to the board. The department shall promptly transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by telephone or by videoconference. When ~~the board renders a decision is rendered by the board~~ and copies of the decision are mailed to all interested parties, including the department, that

decision is final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of sending the board's decision to the party's address of record pursuant to 39-51-2410."

Section 2. Section 39-51-2410, MCA, is amended to read:

"39-51-2410. Finality of board's decision – judicial review. (1) (a)

A decision of the board, in the absence of an appeal filed within 30 days as provided by this section, becomes final 30 days after the decision was sent to the parties at their respective addresses of record.

(b) Judicial review is permitted only after any party claiming to be aggrieved has exhausted all remedies before the board.

(c) The department is considered to be a party to any judicial action involving a decision and may be represented in that action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the decision of the board was sent to the parties at their respective addresses of record, any party aggrieved by the decision may secure judicial review by commencing an action in the district court of the county in which the party resides and in which action any other party to the proceeding before the board must be made a defendant. ~~In such an~~ *As part of the action, the aggrieved party seeking judicial review shall file a petition, which need not be verified but must state the grounds upon on which a review is sought. The petition must be served upon on the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure within 30 days of filing the petition.*

(3) The department shall certify and file with the court all documents and papers and a record of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to the court questions of law involved in any decision by the board.

(4) Whenever the department seeks review *under this section* of a decision of the board, all interested parties must be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, are conclusive and the jurisdiction of the court is confined to questions of law. The action and the questions ~~so~~ *certified as described in subsection (3)* must be heard in a summary manner and must be given precedence over all other civil cases.

(6) ~~An appeal may be taken from the~~ *The district court's decision of the district court may be appealed* to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and a bond may not be required for entering an appeal. Upon the final determination of the judicial proceeding, the department shall enter an order in accordance with the determination."

Approved February 13, 2017

CHAPTER NO. 11

[SB 33]

AN ACT EXEMPTING TRAFFIC SIGNS, TRAFFIC CONTROL DEVICES, AND STREET LIGHTING FROM THE REQUIREMENTS OF THE STATE BUILDING CODE; AND AMENDING SECTION 50-60-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability – local government energy conservation standards. (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within a county, city, or town, unless the local legislative body by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public; or

(e) *traffic control signals, street lighting, traffic control signs, and other traffic control devices.*

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings *and equipment* referred to in subsection (1). A county, city, or town that has made the state building code applicable to the buildings referred to in subsection (1) may enforce within the area of its jurisdiction the state building code as adopted by the county, city, or town.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable; or

(b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) Subject to subsection (6), for purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) Subject to subsection (6), the provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code.

(6) (a) A county, city, or town with a building code enforcement program may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based standards adopted may exceed any applicable energy conservation standards contained in the state building code.

(b) New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.”

Approved February 13, 2017

CHAPTER NO. 12

[SB 36]

AN ACT ELIMINATING AN EXEMPTION ALLOWING INDIVIDUALS TO PERFORM ELECTRICAL WORK ON A GRID-TIED GENERATOR ON THEIR PROPERTY OR RESIDENCE WITHOUT A LICENSE; AMENDING SECTIONS 37-68-102 AND 37-68-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-68-102, MCA, is amended to read:

“37-68-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Board” means the state electrical board provided for in 2-15-1764.

(2) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) “Electrical construction” means work performed by an individual, firm, or corporation in which an electrical connection is made to a supply of electricity or in which electricity is supplied to any electric equipment installation for which a permit is required by the authority having jurisdiction.

(4) (a) “Electrical contractor” means a person, firm, partnership, corporation, association, or combination of these entities that undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power.

(b) The term does not include a person, firm, partnership, corporation, association, or combination of these entities that only plans or designs electrical installations.

(5) “Grid-tied generator” means a generator or a group of generators located on a utility customer’s property or residence and designed to operate in parallel with a utility distribution facility.

~~(5)~~(6) “Journeyman electrician” means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

~~(6)~~(7) “Journeyman level experience” means being recognized as a journeyman electrician by a state or other legally authorized jurisdiction or having a minimum of 8,000 hours of practical experience.

~~(7)~~(8) “Master electrician” means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, layout lay out, and supervise the installation and repair of wiring apparatus

and equipment for electric light, heat, power, and other purposes under the rules governing this work.

~~(8)~~(9) “Practical experience” means experience gained in the electrical construction industry consisting of layout, assembly, repairs, *wiring, and connection and testing of connecting and testing* electrical fixtures, apparatus, and control equipment, ~~and wiring~~ in residential and nonresidential settings pursuant to the provisions of the national electrical code or pursuant to the requirements of another authority having jurisdiction.

~~(9)~~(10) “Public utility” has the meaning provided in 69-3-101.

~~(10)~~(11) “Residential electrician” means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of ~~less~~ *fewer* than five living units in a single structure under the rules governing this work.

(12) *“Utility distribution facility” means a facility by and through which electricity is received from a transmission services provider and distributed to a customer that is controlled or operated by a public utility, municipally owned utility, or cooperative utility that provides electricity for sale to consumers.”*

Section 2. Section 37-68-103, MCA, is amended to read:

“37-68-103. Exemptions. (1) This chapter does not apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, “communications equipment” includes telephone wire inside a customer’s premises. This chapter does not prohibit a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to the permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer or to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) ~~(a)~~ *Except as provided in subsection (3)(b),* this chapter does not require an individual to hold a license to perform electrical work on the individual’s own property or residence if the property or residence is maintained for the individual’s own use.

(b) Subsection (3)(a) does not include an exemption for an individual who is performing electrical work on a grid-tied generator located at the individual’s own property or residence.

(4) An individual, firm, partnership, or corporation may apply for licensure as an electrical contractor if all electrical work performed by the individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a licensed journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) A person who plugs in an electrical appliance where an approved electrical outlet is already installed may not be considered an installer.

(6) This chapter may not in any manner interfere with, hamper, preclude, or prohibit a vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the

installation of electrical wiring of the structure in which the appliance is to be connected.

(7) (a) The licensing and inspection provisions of this chapter do not apply to an apprentice, as that term is defined in 39-6-101, who is working under the supervision of a licensed electrician.

(b) Subsection (7)(a) includes an exemption for a person serving in an approved journeyman apprenticeship program or a residential apprenticeship program during training if serving under the supervision of a licensed electrician.

(8) The licensing provisions of this chapter do not apply to a student who is enrolled in an electrician training program offered by an accredited college or university recognized by the board of regents if the student is undertaking class assignments in a classroom or a hands-on laboratory setting. This subsection does not authorize a student to engage in any electrical work that will be incorporated or used in an occupied structure.

(9) This chapter does not require an individual to hold a license to perform electrical work involving 90 volts or less of alternating current or direct current.”

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to electrical work performed on or after July 1, 2017.

Approved February 13, 2017

CHAPTER NO. 13

[SB 56]

AN ACT EXTENDING A TERMINATION DATE FOR THE PRESCRIPTION DRUG REGISTRY FEE; AMENDING SECTION 20, CHAPTER 241, LAWS OF 2011, AND SECTION 2, CHAPTER 357, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20, Chapter 241, Laws of 2011, is amended to read:

“**Section 20. Termination.** [Section 12(1)] terminates ~~July 1, 2015~~ *June 30, 2019.*”

Section 2. Section 2, Chapter 357, Laws of 2015, is amended to read:

“**Section 2.** Section 20, Chapter 241, Laws of 2011, is amended to read:

“**Section 20. Termination.** [Section 12(1)] terminates ~~July 1, 2015~~ *June 30, 2019.*”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 13, 2017

CHAPTER NO. 14

[SB 77]

AN ACT REVISING TITLE INSURANCE REQUIREMENTS IN TAX DEED LAWS; REVISING NOTICE REQUIREMENTS; AND AMENDING SECTION 15-18-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-212, MCA, is amended to read:

“15-18-212. Notice – proof of notice – penalty for failure to notify.

(1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax lien sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk and recorder shall notify the parties as required in subsection (4) and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax lien sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify the parties as required in subsection (4), if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk and recorder shall provide notification to the parties as required in subsection (4) and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk and recorder as required in subsection (8), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax lien sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk and recorder as required in subsection (8), the county treasurer shall cancel the property tax lien evidenced by the tax lien sale certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) (a) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to the current occupant, if any, of the property and to each party, other than a utility, listed on a **property title litigation** guarantee, provided that *the guarantee*:

(i) ~~the guarantee~~ has been approved by the insurance commissioner and issued by a licensed title insurance producer; ~~and~~

(ii) ~~the guarantee~~ was ordered on the property by the person required to give notice; *and*

(iii) lists the identities and addresses of the parties of record that have an interest or possible claim of an interest in the property designed to disclose all parties of record that would otherwise be necessary to name in a quiet title action.

(b) The address to which the notice must be sent is, for each party, the address disclosed by the records in the office of the county clerk and recorder or in the title *litigation* guarantee and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the party for whom the address is unknown;

(b) a statement that the address of the party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax lien sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax lien sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) The amount of interest and costs provided for in subsection (6)(e) continues to accrue until the date of redemption. The total amount of interest and costs that must be paid for redemption must be calculated by the county treasurer as of the date of payment.

(8) Proof of notice in whatever manner given must be filed with the county clerk and recorder. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk and recorder within 30 days

of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(9) A county or any officer of a county may not be held liable for any error of notification.”

Approved February 13, 2017

CHAPTER NO. 15

[SB 101]

AN ACT REPEALING REQUIREMENTS FOR THE MANDATORY USE OF GASOLINE BLENDED WITH ETHANOL; AMENDING SECTION 82-15-103, MCA; AND REPEALING SECTIONS 82-15-121 AND 82-15-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-15-103, MCA, is amended to read:

“82-15-103. Standards and specifications for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, ethanol-blended gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, must be determined by the department and, ~~subject to the provisions of 82-15-121(1),~~ must be based upon *on* nationally recognized standards and specifications such as the standards and specifications that are published by the American society for testing and materials. The standards and specifications adopted by rule by the department are the standards and specifications for products sold in this state, and official tests of the products must be based upon the adopted standards and specifications.”

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

82-15-121. Required use of gasoline blended with ethanol.

82-15-122. Exemptions from use of ethanol-blended gasoline.

Approved February 13, 2017

CHAPTER NO. 16

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE CURRENT AND SUBSEQUENT LEGISLATURE; AMENDING SECTION 1, CHAPTER 1, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) The following amounts are appropriated from the state general fund for fiscal years 2017, 2018, and 2019 for the operation of the 65th legislature and the costs of preparing for the 66th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	\$3,799,565
2. House of Representatives	\$6,121,251
3. Legislative Services Division	\$1,127,776

(2) The following amounts are appropriated from the state general fund for fiscal year 2019 for the initial costs of the 66th legislature:

LEGISLATIVE BRANCH (1104)

- | | |
|----------------------------------|-----------|
| 1. Senate | \$197,033 |
| 2. House | \$329,866 |
| 3. Legislative Services Division | \$16,500 |

Section 2. Section 1, Chapter 1, Laws of 2015, is amended to read:

“Section 1. Appropriation. (1) The following amounts are appropriated from the state general fund for fiscal years 2015, 2016, and 2017 for the operation of the 64th legislature and the costs of preparing for the 65th legislature:

LEGISLATIVE BRANCH (1104)

- | | |
|----------------------------------|-------------|
| 1. Senate | \$3,402,855 |
| 2. House of Representatives | 5,455,477 |
| 3. Legislative Services Division | 643,722 |

(2) The following amounts are appropriated from the state general fund for fiscal year 2017 for the initial costs of the 65th legislature:

LEGISLATIVE BRANCH (1104)

- | | |
|----------------------------------|-----------|
| 1. Senate | \$222,958 |
| 2. House | 385,322 |
| 3. Legislative Services Division | 16,500 |

(3) *Funds in subsection (1) that were allocated for a legislator technology allowance and that are unencumbered and unexpended on December 31, 2016, may be used to support the 65th legislature in a manner consistent with the appropriation.”*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 13, 2017

CHAPTER NO. 17

[HB 39]

AN ACT ADOPTING THE MOST CURRENT FEDERAL LAWS AND REGULATIONS, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, APPLICABLE TO THE MONTANA NATIONAL GUARD; AMENDING SECTION 10-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

“10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2015~~ 2017, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2015~~ 2017, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent

practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.”

Section 2. Applicability. [This act] applies to events that occur and proceedings begun on or after October 1, 2017.

Approved February 14, 2017

CHAPTER NO. 18

[HB 40]

AN ACT ALLOWING CONFIDENTIAL CRIMINAL JUSTICE INFORMATION RELATING TO A MEMBER OF THE NATIONAL GUARD TO BE DISSEMINATED TO THE ADJUTANT GENERAL OR THE ADJUTANT GENERAL'S DESIGNEE UNDER CERTAIN CIRCUMSTANCES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Access to confidential criminal justice information. The adjutant general or the adjutant general's designee may request from a prosecutor or a law enforcement agency confidential criminal justice information, as defined in 44-5-103, relating to a member of the national guard for use in an administrative action. If the prosecutor or law enforcement agency determines that dissemination of the requested confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the prosecutor or the investigating law enforcement agency may disseminate the information to the adjutant general or the adjutant general's designee.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 1, part 1, and the provisions of Title 10, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2017

CHAPTER NO. 19

[HB 197]

AN ACT REVISING THE NUMBER OF TERMS THAT A MEMBER OF THE BOARD OF REAL ESTATE APPRAISERS MAY SERVE; AMENDING SECTION 2-15-1758, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1758, MCA, is amended to read:

“2-15-1758. Board of real estate appraisers. (1) There is a board of real estate appraisers.

(2) The board consists of seven members appointed by the governor with the consent of the senate.

(3) Five members must be licensed or certified real estate appraisers for a minimum of 3 years, and two members must be representatives of the public who are not engaged in the occupation of real estate appraisal.

(4) A screening panel of the board, established pursuant to 37-1-307, must be composed of at least three members and shall include one member of the board who represents the public and is not engaged in the occupation of real estate appraisal. Any determination that a licensee has violated a statute or rule in a manner that justifies disciplinary proceedings must be concurred in by a majority of the members of the screening panel.

(5) Members shall serve staggered 3-year terms. A member may not serve for more than ~~two~~ *three* consecutive terms.

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

(7) A board member may be removed from the board by the governor for neglect or cause.

(8) The board shall meet at least once each calendar quarter to transact its business.

(9) The board shall elect a presiding officer from among its members.

(10) A board member must receive compensation and travel expenses, as provided in 37-1-133.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2017

CHAPTER NO. 20

[HB 43]

AN ACT CLARIFYING PROPERTY VALUATION INFORMAL REVIEW AND APPEAL DEADLINES; PROVIDING DEADLINES FOR INFORMAL REVIEWS AND APPEALS IN THE SECOND OR SUBSEQUENT YEAR OF THE VALUATION CYCLE; AMENDING SECTIONS 15-7-102 AND 15-15-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-102, MCA, is amended to read:

“15-7-102. Notice of classification, market value, and taxable value to owners – appeals. (1) (a) Except as provided in 15-7-138, the department shall mail or provide electronically to each owner or purchaser under contract for deed a notice that includes the land classification, market value, and taxable value of the land and improvements owned or being purchased. A notice must be mailed to the owner only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) The notice must include the following for the taxpayer’s informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance programs provided for in Title 15, chapter 6, part 3, and the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(c) When the department uses an appraisal method that values land and improvements as a unit, including the sales comparison approach for

residential condominiums or the income approach for commercial property, the notice must contain a combined appraised value of land and improvements.

(d) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each ~~assessment~~ *classification and appraisal* to the correct owner or purchaser under contract for deed and mail or provide electronically the notice in written or electronic form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail or provide electronically the notice to a new owner or purchaser under contract for deed unless the department has received the realty transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed or provided electronically. The department shall notify the county tax appeal board of the date of the mailing or the date when the taxpayer is informed the information is available electronically.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an ~~assessment~~ *informal classification and appraisal* review by submitting an objection on written or electronic forms provided by the department for that purpose.

(i) For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days from the date on the notice.

(ii) For class three property described in 15-6-133 and class four property described in 15-6-134, the objection may be made only once each valuation cycle. An objection must be made *in writing* within 30 days from the date on the ~~assessment~~ *classification and appraisal* notice for a reduction in the appraised value to be considered for both years of the 2-year ~~appraisal~~ *valuation* cycle. ~~Any reduction in value resulting from an~~ An objection made more than 30 days from the date of the ~~assessment~~ *classification and appraisal* notice will be applicable only for the second year of the 2-year ~~reappraisal~~ *valuation* cycle. *For an objection to apply to the second year of the valuation cycle, the taxpayer must make the objection in writing no later than June 1 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year of the valuation cycle, within 30 days from the date on the notice.*

(iii) For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made *in writing* within 30 days from the date on the ~~assessment~~ *classification and appraisal* notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. ~~Any reduction in value resulting from an~~ An objection made more than 30 days after the date of the ~~assessment~~ *classification and appraisal* notice applies only for the subsequent remaining years of the 6-year reappraisal cycle. *For an objection to apply to any subsequent year of the valuation cycle, the taxpayer must make the objection in writing no later than*

June 1 of the year for which the value is being appealed or, if a classification and appraisal notice is received after the first year of the valuation cycle, within 30 days from the date on the notice.

(b) If the objection relates to residential or commercial property and the objector agrees to the confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within 8 weeks of submission of the objection, the following information:

(i) the methodology and sources of data used by the department in the valuation of the property; and

(ii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) At the request of the objector, and only if the objector signs a written or electronic confidentiality agreement, the department shall provide in written or electronic form:

(i) comparable sales data used by the department to value the property; and

(ii) sales data used by the department to value residential property in the property taxpayer's market model area.

(d) For properties valued using the income approach as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.

(e) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The ~~county tax appeal board~~ ~~[department]~~ department shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was ~~conducted~~ *completed* within 6 months of the valuation date *pursuant to 15-8-201*. If the department does not use the appraisal provided by the taxpayer in conducting the appeal, the department must provide to the taxpayer the reason for not using the appraisal. The department shall give reasonable notice to the taxpayer of the time and place of the review.

(f) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination by mail or electronically. The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property or data available for the property that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection on written or electronic forms provided by the department; and

(b) the department has provided to the objector by mail or electronically its stated reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 2. Section 15-15-102, MCA, is amended to read:

"15-15-102. Application for reduction in valuation. (1) The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board.

(2) The application for reduction may be obtained at the local appraisal office or from the county tax appeal board. The completed application must be submitted to the county clerk and recorder. The date of receipt is the date stamped on the appeal form by the county clerk and recorder upon receipt of the form. The county tax appeal board is responsible for obtaining the applications from the county clerk and recorder.

(3) One application for reduction may be submitted during each ~~2-year~~ *reappraisal valuation* cycle. The application must be submitted within ~~30 days from the date on the notice required under~~ *the time periods provided for in 15-7-102(3)(a).*

(4) *A taxpayer who receives an informal review by the department of revenue as provided in 15-7-102(3) may appeal the decision of the department of revenue to the county tax appeal board as provided in 15-7-102(6). The taxpayer may not file a subsequent application for reduction for the same property with the county tax appeal board during the same valuation cycle.*

(5) If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 17, 2017

CHAPTER NO. 21

[HB 63]

AN ACT REVISING LAWS RELATED TO ANNUAL WAGE AND TAX STATEMENTS; REVISING THE FILING DATE FOR EMPLOYERS TO FILE ANNUAL WAGE AND TAX STATEMENTS AND ROYALTY AND TAX

STATEMENTS TO ALIGN WITH FEDERAL FILING DEADLINE; REVISING THE REMITTANCE DUE DATE FOR EMPLOYERS ON AN ANNUAL PAYMENT SCHEDULE TO ALIGN WITH THE DUE DATE FOR ANNUAL WAGE AND TAX STATEMENTS; AMENDING SECTIONS 15-30-2504, 15-30-2507, AND 15-30-2544, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2504, MCA, is amended to read:

“15-30-2504. Schedules for remitting income withholding taxes – records. (1) Subject to the due date provision in 15-30-2604(1)(b), an employer shall remit the taxes withheld from employee wages as follows:

(a) An employer whose total liability for state income tax withholding during the preceding lookback period was \$12,000 or more shall remit on an “accelerated schedule”, which is the same as the employer’s federal due dates for federal tax deposits.

(b) An employer whose total liability for state income tax withholding during the preceding lookback period was less than \$12,000 but more than \$1,199 shall remit on a “monthly schedule” for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) An employer whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 shall remit on an “annual schedule” for which the remittance due date is on or before ~~February 28~~ *January 31* of the year following payment of wages.

(d) An employer who has no withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.

(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).

(3) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers’ remittance schedules for the following calendar year based upon the department’s review of the preceding lookback period.

(4) A new employer or an employer with no filing history is subject to the monthly remittance schedule in subsection (1)(b) until the department is able to determine the employer’s proper remittance schedule by a review of the employer’s first complete lookback period.

(5) An employer may elect to remit payments on a more frequent basis than is required by subsection (1).

(6) An employer may use alternative remittance methods in conjunction with the department’s electronic remittance program in accordance with department rules.

(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

(8) Each employer shall keep accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer’s expense.”

Section 2. Section 15-30-2507, MCA, is amended to read:

“15-30-2507. Annual statement by employer. (1) Every employer shall, on or before ~~February 28~~ *January 31* in each year, file with the department

a wage and tax statement for each employee in the form and summarizing information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part of the calendar year and showing the total amount of the federal income tax deducted and withheld from the wages and the total amount of the tax deducted and withheld from the wages under the provisions of 15-30-2501 through 15-30-2509.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-2616 relating to the duties of information agents, and additional information return is not required with respect to the wage payments.”

Section 3. Section 15-30-2544, MCA, is amended to read:

“15-30-2544. Remitter to furnish annual statement to department.

(1) On or before ~~February 28~~ *January 31* of each year, each remitter shall file with the department a royalty and tax statement, on a form provided by the department, that shows the total royalties paid to each royalty owner subject to withholding during the preceding calendar year or any portion of the preceding calendar year and the total amount of the tax deducted and withheld from the royalty payments under the provisions of 15-30-2536 through 15-30-2547 for the same period.

(2) The annual statement filed by a remitter under this section complies with the requirements of 15-30-2616 relating to the duties of information agents. An additional information return is not required with respect to the royalty payments.

(3) The department shall make the forms described in 15-30-2541 and this section available no later than November 15, 2007.”

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016.

Approved February 17, 2017

CHAPTER NO. 22

[HB 76]

AN ACT REQUIRING REMITTANCES OF UNUSED TAX INCREMENT TO BE MADE PROPORTIONALLY TO ALL AFFECTED TAXING JURISDICTIONS; AMENDING SECTION 7-15-4291, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4291, MCA, is amended to read:

“7-15-4291. Agreements to remit unused portion of tax increments.

(1) ~~Subject to subsections (2) through (5), the local government may also enter into agreements with the other affected taxing bodies to remit to those taxing bodies a local government may enter into an agreement to remit~~ any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289. *The remittance agreement must:*

(a) *provide for remittance to each taxing jurisdiction for which the mill rates are included in the calculation of the tax increment as provided in 7-15-4286; and*

(b) *require that the remittance be proportional to the taxing jurisdiction’s share of the total mills levied.*

(2) Any portion of the increment remitted to a school district:

(a) must be used to reduce property taxes or designated as operating reserve pursuant to 20-9-104 for the fiscal year following the fiscal year in which the remittance was received;

(b) must be deposited in one or more of the following funds that has a mill levy for the current school year, subject to the provisions of Title 20 and this section:

(i) general fund;

(ii) bus depreciation reserve fund;

(iii) debt service fund;

(iv) building reserve fund;

(v) technology acquisition and depreciation fund; and

(c) may not be transferred to any fund.

(3) The remittance will not reduce the levy authority of the school district receiving the remittance in years subsequent to the time period established by subsection (2)(a).

(4) Any portion of the increment remitted to a school district and deposited into the general fund must be designated as operating reserve pursuant to 20-9-104 or used to reduce the BASE budget levy or the over-BASE budget levy in the following fiscal year.

(5) If a school district does not utilize the remitted portion to reduce property taxes or designate the remittance as operating reserve within the time period established by subsection (2)(a), the unused portion must be remitted as follows:

(a) if the area or district is in existence at the time of the remittance, the portion is distributed to the special fund in 7-15-4286(2)(a) and used as provided in 7-15-4282 through 7-15-4294; or

(b) if the area or district is not in existence at the time of the remittance, the portion is distributed pursuant to 7-15-4292(2)(a)."

Section 2. Applicability. [This act] applies to remittance agreements entered into on or after [the effective date of this act].

Approved February 17, 2017

CHAPTER NO. 23

[HB 80]

AN ACT REVISING PROVISIONS RELATED TO BUSINESS SERVICES UNDER THE OFFICE OF THE SECRETARY OF STATE; REVISING HOW LONG AN ASSUMED BUSINESS NAME REMAINS IN EFFECT; ELIMINATING THE REQUIREMENT FOR AN AFFIDAVIT TO CANCEL A BUSINESS NAME OR A LIMITED LIABILITY PARTNERSHIP; EXPANDING THE DEFINITION OF THE TERM "DELIVER"; ALLOWING THE SECRETARY OF STATE TO PROVIDE NOTICE TO BUSINESS ENTITIES ELECTRONICALLY; REQUIRING A DISSOLVED LIMITED PARTNERSHIP TO MAINTAIN AN AGENT FOR SERVICE OF PROCESS; AND AMENDING SECTIONS 30-13-204, 30-13-213, 35-1-113, 35-1-1039, 35-2-833, 35-6-104, 35-7-110, 35-8-208, 35-8-913, 35-8-1001, 35-8-1012, 35-10-721, 35-12-1201, AND 35-12-1313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-204, MCA, is amended to read:

“30-13-204. Filing application for registration – issuance of certificate. (1) The applicant shall complete and submit an application for registration of an assumed business name along with all applicable fees to the secretary of state. If the secretary of state finds that the application complies with the provisions of this part, the secretary of state shall:

(a) endorse on the application the word “filed” and the date on which the application was filed;

(b) file the application in the secretary of state’s office; and

(c) issue a certificate of registration to the applicant.

(2) The registration of an assumed business name remains in effect ~~until~~ *for 5 years unless canceled earlier.*”

Section 2. Section 30-13-213, MCA, is amended to read:

“30-13-213. Voluntary cancellation of registration of assumed business name. (1) When the registrant of record of a registered assumed business name wishes to cancel the registration, the registrant shall deliver to the secretary of state ~~an executed and verified original affidavit of a~~ cancellation of registration of an assumed business name *form*, which must include but not be limited to the following information:

(a) the complete registered assumed business name to be canceled; and

(b) the name and business mailing address of the registrant of record.

(2) If the secretary of state finds the ~~affidavit~~ *form* complies with the provisions of this section, the secretary of state shall file it and ~~mail~~ *deliver* a letter acknowledging cancellation of the filing to the registrant of record.”

Section 3. Section 35-1-113, MCA, is amended to read:

“35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) “Articles of incorporation” include amended and restated articles of incorporation and articles of merger.

(2) “Authorized agent” means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(3) “Authorized shares” means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(4) “Conspicuous” means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(5) “Corporation” or “domestic corporation” means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

(6) “Deliver” ~~includes mail or~~ *“delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.*

(7) “Distribution” means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(8) “Effective date of notice” means the date determined as provided in 35-1-116.

(9) *“Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper*

that is suitable for the retention, retrieval, and reproduction of information by the recipient.

~~(9)~~(10) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

~~(10)~~(11) "Entity" includes:

- (a) a corporation and a foreign corporation;
- (b) a not-for-profit corporation;
- (c) a profit and a not-for-profit unincorporated association;
- (d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and
- (e) a state, the United States, or a foreign government.

~~(11)~~(12) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state, including the laws of a federally recognized Indian tribe.

~~(12)~~(13) "Governmental subdivision" includes an authority, county, district, and city or town.

~~(13)~~(14) "Includes" denotes a partial definition.

~~(14)~~(15) "Individual" includes the estate of an incompetent or deceased individual.

~~(15)~~(16) "Means" denotes an exhaustive definition.

~~(16)~~(17) "Notice" means notice as provided in 35-1-116.

~~(17)~~(18) "Person" includes an individual and an entity.

~~(18)~~(19) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

~~(19)~~(20) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

~~(20)~~(21) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

~~(21)~~(22) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

~~(22)~~(23) "Share" means the unit into which the proprietary interests in a corporation are divided.

~~(23)~~(24) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

~~(24)~~(25) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

~~(25)~~(26) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~(26)~~(27) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

~~(27)~~(28) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group."

Section 4. Section 35-1-1039, MCA, is amended to read:

“35-1-1039. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-1-1038 for revocation of a certificate of authority, the secretary of state shall *mail deliver* to the foreign corporation the written notice of the determination.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after the notice is *mailed delivered*, the secretary of state may revoke the foreign corporation’s certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and *mail deliver* a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state’s revocation of a foreign corporation’s certificate of authority appoints the secretary of state as the foreign corporation’s agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall *mail deliver* a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if a report or communication is not on file, in its application for a certificate of authority.

(5) Revocation of a foreign corporation’s certificate of authority does not terminate the authority of the registered agent of the corporation.”

Section 5. Section 35-2-833, MCA, is amended to read:

“35-2-833. Procedure for and effect of revocation. (1) The secretary of state, upon determining that one or more grounds exist under 35-2-832 for revocation of a certificate of authority, shall *mail deliver* to the foreign corporation written notice of that determination under 35-2-830.

(2) The attorney general, upon determining that one or more grounds exist under 35-2-832(2) for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under 35-2-830.

(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within 60 days after *mailing delivering* the notice or after service of the notice is perfected under 35-2-830, the secretary of state may revoke the foreign corporation’s certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and *mail deliver* a copy to the foreign corporation.

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) Revocation of a foreign corporation’s certificate of authority does not terminate the authority of the registered agent of the corporation.”

Section 6. Section 35-6-104, MCA, is amended to read:

“35-6-104. Involuntary dissolution – procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting

corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) *mailing delivery* a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the *mailing delivery* or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following *mailing delivery* or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and 35-1-938 through 35-1-943 or 35-2-729, whichever is appropriate, is applicable to liquidate the property and assets if necessary.”

Section 7. Section 35-7-110, MCA, is amended to read:

“35-7-110. Change of name, address, or type of organization by commercial registered agent. (1) If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, its address as currently listed under 35-7-106(1), or its type or jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent that states:

(a) the name of the agent as currently listed under 35-7-106(1);

(b) if the name of the agent has changed, its new name;

(c) if the address of the agent has changed, the new address; and

(d) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(2) The filing of a statement of change under subsection (1) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(3) A statement of change filed under this section takes effect on filing.

(4) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(5) If a commercial registered agent changes its address without filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under 35-7-106. A cancellation under this subsection has the same effect as a termination under 35-7-107. Promptly after canceling the listing of an agent, the secretary of state shall *serve deliver* notice in a record in the manner provided in 35-7-113(2) or (3) on:

(a) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in 35-7-113; and

(b) the agent, stating that the listing of the agent has been canceled under this section.

(6) The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of filing.”

Section 8. Involuntary dissolution – procedure. (1) A limited liability company that is guilty of any of the actions or omissions described in 35-8-209(1) is in default. By reason of the default, the limited liability company may be involuntarily dissolved by order of the secretary of state, thereby forfeiting its right to transact any business in this state.

(2) On or before September 1 of each year, the secretary of state shall compile a list of defaulting limited liability companies, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(3) The secretary of state shall give notice to the defaulting limited liability companies by:

(a) delivering a letter addressed to the limited liability company in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana limited liability companies once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(4) The notice referred to in subsection (3) must specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-8-209 have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the defaulting limited liability company;

(b) a defaulting limited liability company will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) a defaulting limited liability company will forfeit its right to carry on business within the state.

(5) After 90 days following delivery or publication of each notice, the secretary of state may, by order, dissolve a limited liability company that has not satisfied the requirements of applicable law and compile a full and complete list containing the names of all limited liability companies that have been so dissolved. The secretary of state shall immediately give notice to the dissolved limited liability companies as specified in subsection (3).

(6) In the case of involuntary dissolution, all the property and assets of a dissolved limited liability company must be held in trust by the members or managers of the limited liability company and the limited liability company may carry on business only as necessary to wind up and liquidate its business and affairs under 35-8-901 and to notify claimants under 35-8-908 and 35-8-909.

(7) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

Section 9. Section 35-8-208, MCA, is amended to read:

“35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the jurisdiction under whose law it is organized;

(b) the information required by 35-7-105(1);

(c) the business mailing address of its principal office, wherever located;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and business mailing addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect and the names and business mailing addresses of the members;

(e) that the management of a series of members is vested in the members associated with the series of members;

(f) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly ~~notify~~ *deliver a notice to* the reporting domestic or foreign limited liability company ~~in writing~~ and return the report to the limited liability company for correction.

(5) The annual report must be executed by at least one member of the limited liability company or by the authorized agent.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.”

Section 10. Section 35-8-913, MCA, is amended to read:

“35-8-913. Appeal from denial of reinstatement. (1) If the secretary of state denies a limited liability company’s application for reinstatement following administrative dissolution, the secretary of state shall ~~serve the company with a record~~ *deliver a notice to the company* that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to a district court within 30 days after ~~service delivery~~ of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state’s certificate of dissolution, the company’s application for reinstatement, and the secretary of state’s notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings."

Section 11. Section 35-8-1001, MCA, is amended to read:

"35-8-1001. Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

- (a) maintaining, defending, or settling any proceeding;
- (b) holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;
- (c) maintaining bank accounts;
- (d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;
- (e) selling through independent contractors;
- (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;
- (j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or
- (k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign limited liability company is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must apply for and receive a certificate of authority to transact business before entering into the contract. The secretary of state shall ~~provide written~~ *deliver a notice* to the contracting parties regarding the requirement that a foreign limited liability company obtain a certificate of authority. The foreign limited liability company must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in this state."

Section 12. Section 35-8-1012, MCA, is amended to read:

"35-8-1012. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-8-1011 for revocation of a certificate of authority, the secretary of state shall ~~serve~~ *deliver a notice* to the foreign limited liability company ~~with written notice~~ of the secretary of state's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after ~~service~~ *delivery* of the notice ~~is mailed~~, the secretary of state may revoke the foreign limited liability company's certificate of authority

by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and ~~mail~~ *deliver* a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall ~~mail~~ *deliver* a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.”

Section 13. Section 35-10-721, MCA, is amended to read:

“35-10-721. Voluntary cancellation of registration of limited liability partnership. (1) When a limited liability partnership wishes to cancel its registration, two or more partners shall deliver to the secretary of state an ~~executed and verified original affidavit of~~ a cancellation of registration of a limited liability partnership *form*, which must include but is not limited to the following information:

(a) the complete name of the registered limited liability partnership to be canceled;

(b) the business mailing address of the limited liability partnership; and

(c) the names and business mailing addresses of the partners.

(2) If the secretary of state finds the ~~affidavit~~ *form* complies with the provisions of this section, the secretary of state shall file it and ~~mail~~ *deliver* a letter acknowledging cancellation of the registration to the limited liability partnership.”

Section 14. Section 35-12-1201, MCA, is amended to read:

“35-12-1201. Nonjudicial dissolution. Except as otherwise provided in 35-12-1201, a limited partnership is dissolved and its affairs may be wound up only upon the occurrence of of any the following:

(1) on the happening of an event specified in the partnership agreement;

(2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(3) after the dissociation of a person as a general partner:

(a) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(b) if the limited partnership does not have a remaining general partner, the filing of the dissolution with the secretary of state unless before the end of the period:

(i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) at least one person is admitted as a general partner in accordance with the consent;

(4) the passage of 90 days after the dissociation of the limited partnership's last limited partner unless before the end of the period the limited partnership admits at least one limited partner; or

(5) the signing and filing of a declaration of dissolution by the secretary of state.

(6) *A dissolved limited partnership shall appoint and maintain an agent for service of process as required by 35-7-105 or deliver for filing a statement of change under 35-7-108 within 30 days after a change has occurred in the name or address of agent.*"

Section 15. Section 35-12-1313, MCA, is amended to read:

"35-12-1313. Revocation of certificate of authority. (1) A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state in the manner provided in subsections (2) and (3) if the foreign limited partnership does not:

(a) pay any fee, tax, or penalty due to the secretary of state under this chapter or other law;

(b) appoint and maintain an agent for service of process as required by 35-7-105; or

(c) deliver for filing a statement of a change under 35-7-108 within 30 days after a change has occurred in the name or address of the agent.

(2) In order to revoke a certificate of authority, the secretary of state shall prepare, sign, and file a notice of revocation and ~~send~~ *deliver* a copy to the foreign limited partnership's agent for service of process in this state or, if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's designated office. The notice must state:

(a) the revocation's effective date, which must be at least 60 days after the date the secretary of state sends the copy; and

(b) the foreign limited partnership's failures to comply with subsection (1) that are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (1) stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice."

Section 16. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 35, chapter 8, part 9, and the provisions of Title 35, chapter 8, part 9, apply to [section 8].

Approved February 17, 2017

CHAPTER NO. 24

[HB 87]

AN ACT TRANSFERRING THE DUTIES FOR PRODUCING JURY LISTS FROM THE SECRETARY OF STATE TO THE OFFICE OF COURT

ADMINISTRATOR; AND AMENDING SECTIONS 3-15-402, 3-15-403, AND 61-5-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-402, MCA, is amended to read:

“3-15-402. Selection of qualified persons. The secretary of state shall select from the most recent list of all registered active electors, as defined in 13-1-101, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. ~~The~~ *On or before the second Monday of April of each year, the secretary of state shall deliver the list to the office of court administrator. The office of court administrator shall then combine the resulting list with the list submitted to the secretary of state office of court administrator under 61-5-127, ensuring that a person’s name does not appear on the combined list more than once. Each name appearing on the combined list must be assigned a number that must be placed opposite the name on the combined list and must be considered the number of the juror opposite whose name it appears. A person’s name may not appear on a combined list for more than one court during a 1-year term.”*

Section 2. Section 3-15-403, MCA, is amended to read:

“3-15-403. Jury lists -- filing -- public inspection. (1) On or before the first Monday in May, the combined list prepared under 3-15-402 must be delivered by the ~~secretary of state office of court administrator~~ to the clerk of the district court and filed by the clerk of the district court in the clerk of the district court’s office no later than 5 business days after the receipt of the combined list.

(2) A copy of the latest jury lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202 and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of the district court. An excerpt, listing the name, address, and birth year of all jurors, must be made available for public inspection during normal business hours.”

Section 3. Section 61-5-127, MCA, is amended to read:

“61-5-127. Providing lists ~~list of licensed drivers and holders of Montana identification cards to clerks of district court --~~ for jury selection purposes. (1) On the second Monday of April of each year, the department shall submit to the ~~secretary of state office of court administrator~~ a list, prepared from the department’s databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards, authorized by 61-12-501, who are 18 years of age or older ~~and whose address is in that county~~. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are composed of only those residents living within a city’s jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general’s designee.

(3) The department may not provide the social security or driver’s license numbers of persons on the list for any purpose.”

Approved February 17, 2017

CHAPTER NO. 25

[HB 88]

AN ACT REVISING THE INCUMBENT WORKER TRAINING PROGRAM; REMOVING CERTAIN RESTRICTIONS; EXPANDING ELIGIBILITY FOR PARTICIPATION; REVISING FUNDING SOURCES; AMENDING SECTIONS 53-2-1215, 53-2-1216, 53-2-1217, 53-2-1218, AND 53-2-1219, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-1215, MCA, is amended to read:

“53-2-1215. Incumbent worker training program – purpose. There is an incumbent worker training program, administered by the department, the purpose of which is to:

(1) meet the training needs of incumbent workers in businesses employing 20 50 or fewer workers in this state at any one location but not more than 50 workers statewide; and

(2) assist local businesses in preserving existing jobs for Montana residents.”

Section 2. Section 53-2-1216, MCA, is amended to read:

“53-2-1216. Definitions. As used in 53-2-1215 through 53-2-1220, the following definitions apply:

(1) ~~“BEAR program” means a business expansion and retention program implemented by local communities that uses assessments, interviews, and surveys to assist employers and that has been recognized as a BEAR program for the purposes of 53-2-1215 through 53-2-1220 by the governor’s office of economic development, the department of commerce, and the department.~~

(2)(1) “Department” means the department of labor and industry provided for in 2-15-1701.

(3)(2) “Eligible training provider” means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana;

(d) an apprenticeship program that is in compliance with Title 39, chapter 6; or

(e) an entity approved to provide workforce training that is approved by representatives of the BEAR program, the small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman the department.

(4)(3) “Employee” or “worker” means an individual currently employed in a full-time job or a permanent part-time job predominately year-round job and working an average of at least 20 hours a week.

(5)(4) “Employer” means a business entity that employs 20 50 or fewer employees in this state in one location but not more than 50 employees statewide and that is registered with the secretary of state to conduct business as a sole proprietor, if required, or as a corporation, a partnership, a limited liability company, or an association.

(6) “Full-time job” means a predominantly year-round position requiring an average of 35 hours or more of work each week.

(7)(5) “Incumbent worker” means an employee who has completed a probationary period as defined by the employer’s policy or as described in 39-2-904, whichever period is shorter at least 6 months of employment with the employer.

(8)(6) “Incumbent worker training program grant” or “grant” means the grant awarded to employers to hire eligible training providers to provide incumbent workers with education and training required to improve productivity, efficiency, or wages in existing jobs.

(9) ~~“Permanent part-time job” means a predominantly year-round position requiring an average of 20 to 34 hours of work each week.”~~

Section 3. Section 53-2-1217, MCA, is amended to read:

“53-2-1217. Incumbent worker training program criteria for applicants. (1) An employer applying for an incumbent worker training program grant must:

(a) have been in business in this state for a minimum of 1 year; *and*
 (b) have a need for training incumbent workers; *and*
 (c) ~~be an existing client of a BEAR program recognized by the department, of a small business development center, or of the Montana manufacturing extension center at Montana state university-Bozeman.~~

(2) ~~An applicant for an incumbent worker training program grant shall agree to:~~

(a) ~~provide certified education or skills-based training for incumbent workers in existing full-time jobs and permanent part-time jobs through an eligible training provider;~~

(b) ~~match every \$4 requested with at least \$1 of employer funds. The same match applies for in-state training and for out-of-state training. Matching funds may include wages and benefits paid for the day that the actual training takes place and for appropriate travel and lodging charges associated with the approved training. For out-of-state training the employer is responsible for at least 50% of the actual costs of appropriate travel and lodging.~~

(2) *An employer may apply for an incumbent worker training program grant. The employer shall agree to the following conditions as a condition of receiving the grant:*

(a) *The employer shall purchase, through an eligible training provider, certified education or skills-based training for incumbent workers in existing jobs.*

(b) (i) *The employer shall contribute to the cost of the training. Except for out-of-state travel and lodging expenses as provided in subsection (2)(b)(iii), the employer may make in-kind contributions by paying wages to the worker who is being trained, pursuant to rule, when the worker is undergoing training and when engaged in necessary travel related to that training.*

(ii) *The employer shall pay at least 20% of the cost of the training purchased by the employer.*

(iii) *The employer shall pay at least 20% of approved transportation costs and lodging expenses incurred when the training is provided within Montana. The employer shall pay at least 50% of the approved transportation costs and lodging expenses incurred when the training is provided outside of Montana.*

(c) *The employer shall provide evidence to the department that training was completed.*

(3) An incumbent worker training program grant application must contain at a minimum:

(a) ~~a cover letter describing the goals of the training for the incumbent workers, the anticipated economic benefits from the training, and the amount of funding requested;~~

(b)(a) information that provides an adequate understanding of the applicant’s business and the training objective;

(c)(b) a description of the eligible training provider’s proposed curriculum, resources, methods, and duration of training;

(d)(c) a list of incumbent workers to be trained and their current job descriptions and base wage rates plus the expected wage rates after training; and

(e) the total number of the employer's employees at the location of the proposed training and within the state;

(f) the sources of matching funds to be provided; and

(g)(d) any other information required by rule by the department that is similar to information required for other employment-related grants."

Section 4. Section 53-2-1218, MCA, is amended to read:

"53-2-1218. Incumbent worker training program grant award criteria. (1) Subject to appropriation by the legislature, the department shall award grants based on recommendations from BEAR programs, small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman as provided in subsection (2) *this section*. The distribution of funding must be reviewed annually by the department, and funds that are not being used or for which there are no qualified applications, as determined by the department, may be transferred to other programs as provided in 17-7-138 and 17-7-139.

(2) A BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman participating in the incumbent worker training program shall review applications and make recommendations for awards to the department regarding qualified applicants based on the criteria in subsection (3):

(3)(2) The following criteria must be used in determining whether to award an incumbent worker training program grant:

(a) prospects for enhancing the incumbent worker's productivity, efficiency, or wages;

(b) prospects for reducing incumbent worker turnover;

(c) ability to provide matching funds;

(d) a demonstrated need by the employer for upgrading skills of incumbent workers through training as a way to improve the employer's ability to remain competitive in the industry or in the economy;

(e) a direct relationship between the training and an added benefit to the incumbent worker's occupation or craft; and

(f) a demonstration that the training is not normally provided or required by the employer and, as far as may be determined, by the employer's competitors.

(4)(3) An incumbent worker training program grant award is limited to:

(a) may not exceed \$2,000 or less annually for each full-time job for which an incumbent worker *who* is being trained; or

(b) \$1,000 or less for each permanent part-time job for which an incumbent worker is being trained.

(5)(4) Subject to funding, the department may:

(a) limit the number of applicants that receive grant awards; or

(b) award less than the amount provided in subsection (4); or (3).

(c) award a higher amount than that provided in subsection (4) if a full-time job for which an incumbent worker is being trained under an incumbent worker training program grant award pays significantly higher wages and benefits than the incumbent worker's current job. Before making an award for a higher amount as provided in this subsection (5)(c), the department must receive a recommendation for the higher amount from a BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman working with the employer and documentation from the employer regarding the need for the higher amount.

(6)(5) The recipient of a grant shall provide the department with:

(a) a properly executed agreement, signed by the employer's authorized representative, that outlines terms of the grant;

(b) documentation upon completion of training that the training was *provided purchased* and to whom the training was provided, including copies of certificates or statements of completion; and

(c) all receipts or copies of receipts associated with the training and the application."

Section 5. Section 53-2-1219, MCA, is amended to read:

"53-2-1219. Special revenue account. There is a ~~federal~~ *state* special revenue account to the credit of the department for use in the incumbent worker training program that may be spent subject to appropriation by the legislature. Money must be deposited in the account from ~~federal~~ funds that are available for incumbent worker training."

Section 6. Effective date. [This act] is effective July 1, 2017.

Approved February 17, 2017

CHAPTER NO. 26

[HB 115]

AN ACT REVISING THE REQUIREMENTS RELATED TO WHICH GUIDES MUST BE USED FOR VALUING AGRICULTURAL IMPLEMENTS AND MACHINERY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-111, MCA, is amended to read:

"15-8-111. Appraisal – market value standard – exceptions. (1) All taxable property must be appraised at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses the cost approach as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the income approach as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (4), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) In valuing class four residential and commercial property described in 15-6-134, the department shall conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation. In valuing the property, the department shall use information available from any source considered reliable. Comparable properties used for valuation must

represent similar properties within an acceptable proximity of the property being valued.

(4) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the ~~wholesale market~~ value for agricultural implements and machinery is the average wholesale value category as ~~shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri provided in published national agricultural and implement valuation guides. The valuation guide must provide average wholesale values specific to the state of Montana or a region that includes the state of Montana. The department shall adopt by rule the valuation guides used as provided in this subsection. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or~~ wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

(c) (i) for condominium property, the department shall establish the value as provided in subsection (5); and

(ii) for a townhome or townhouse, as defined in 70-23-102, the department shall determine the value in a manner established by the department by rule; and

(d) as otherwise authorized in Titles 15 and 61.

(5) (a) Subject to subsection (5)(c), if sufficient, relevant information on comparable sales is available, the department shall use the sales comparison approach to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(b) Subject to subsection (5)(c), if sufficient, relevant information on income is made available to the department, the department shall use the income approach to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(c) If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the cost approach. When using the cost approach, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.

(6) For purposes of taxation, assessed value is the same as appraised value.

(7) The taxable value for all property is the market value multiplied by the tax rate for each class of property.

(8) The market value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by

15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at 100% of market value.

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(9) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 17, 2017

CHAPTER NO. 27

[HB 122]

AN ACT CLARIFYING LICENSING AND PROFESSIONAL CONDUCT REQUIREMENTS UNDER THE BOARD OF REALTY REGULATION; DELINEATING EXAMINATIONS; REMOVING THE REQUIREMENT FOR POCKET CARDS; AMENDING SECTIONS 37-51-204, 37-51-302, 37-51-308, 37-51-309, 37-51-313, 37-51-321, 37-51-603, AND 37-51-605, MCA; REPEALING SECTION 37-51-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-204, MCA, is amended to read:

“**37-51-204. Educational programs.** (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302, 37-51-303, 37-51-603, and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) Education information obtained electronically by the board or stored in the board’s databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-306.”

Section 2. Section 37-51-302, MCA, is amended to read:

“**37-51-302. Broker’s or salesperson’s license -- qualifications of applicant -- supervising broker endorsement.** (1) Licenses may be granted only to individuals considered by the board to be of good repute and

competent to transact the business of a broker or a salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of a licensed broker with a supervising broker endorsement by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

~~(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.~~

(5) If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to the applicant.

(6) (a) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board by rule except that continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement.

(c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a supervising broker endorsement other than the supervising broker listed on the salesperson's ~~pocket card~~ license."

Section 3. Section 37-51-308, MCA, is amended to read:

"37-51-308. Broker's office -- display -- notice to department of change of address. (1) A licensed broker shall maintain a designated physical address where the original license or a copy of the current license of the broker and, if the broker is a supervising broker, the original license of each salesperson associated or under contract with the broker must be prominently displayed. The designated address of the broker must be indicated on the broker's license.

(2) (a) *If the broker is a supervising broker, the broker shall prominently display at the broker's designated physical address a copy of the current license of each salesperson associated or under contract with the broker.*

(b) *The name of the broker and the designated address of the broker must be indicated on the salesperson's license.*

(2)(3) In case of removal from the designated address, the broker shall notify the department before removal or within 10 days after removal, designating the new physical address and paying the required fee. After receipt of the information required under this subsection, the department shall issue a license to the broker for the new location for the unexpired period."

Section 4. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker -- salesperson -- for sale by owner personal transactions of salesperson -- notice to department of change of association. (1) A salesperson may not be associated with, or under contract to, or perform services for more than one supervising broker, or perform services for a broker with a supervising broker endorsement other than the one designated on the license issued to the salesperson except on a temporary basis as provided in 37-51-302.

(2) (a) ~~When~~ *If a licensed salesperson desires to change association or contractual relationship from one supervising broker to another, the salesperson shall notify the department promptly in writing of these facts, and pay the required fee., and return the salesperson's license, and*

(b) *The successor supervising broker shall notify the department in writing of acceptance of the salesperson.*

(c) *After the department receives written acceptance of the salesperson from the successor supervising broker, the department shall issue a new license and pocket card must be issued to the salesperson and a new endorsement to the supervising broker.* A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been issued a license to work for or with that supervising broker. ~~On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's supervising broker, who shall return it to the department for cancellation.~~

(3) (a) *If a licensed salesperson chooses to change association or contractual relationship from the salesperson's supervising broker, but the salesperson does not have another supervising broker who has accepted supervision of the salesperson, the salesperson shall notify the department promptly in writing, at which time the salesperson's license will automatically be put on inactive status.*

(b) *When the conditions in subsection (3)(a) apply, the department may not charge a fee for the change in status.*

(c) *The salesperson may not practice during a time when the salesperson has no supervising broker or when the salesperson's license is on inactive status.*

(4) A supervising broker who wishes to terminate supervision of a salesperson shall notify the salesperson in advance or concurrently with notification to the board. Termination of supervision by the supervising broker is not effective under this subsection until the supervising broker has notified both the salesperson and the board.

~~(3)~~(5) Only one license ~~may be~~ issued to a salesperson ~~to be~~ is in effect at one time.

~~(4)~~(6) (a) The provisions of this chapter do not prohibit a salesperson from engaging in ~~for sale by owner~~ *for-sale-by-owner* personal transactions, and the provisions of this chapter do not require a supervising broker to exercise any supervision or provide any training for a salesperson with respect to ~~for sale by owner~~ *for-sale-by-owner* personal transactions of the salesperson.

(b) A supervising broker or real estate firm is not responsible or liable for the ~~for sale by owner~~ *for-sale-by-owner* personal transactions of a salesperson.

(c) Prior to entering into a ~~for sale by owner~~ *for-sale-by-owner* personal transaction, the salesperson shall disclose in writing to the other party that the transaction is a ~~for sale by owner~~ *for-sale-by-owner* personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's supervising broker or real estate firm.

(d) A supervising broker or real estate firm is not responsible or liable for the failure of a salesperson to provide the disclosure required in subsection ~~(4)~~(e) (6)(c).

~~(5)~~(7) For the purposes of this section, "~~for sale by owner~~ *for-sale-by-owner* personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson."

Section 5. Section 37-51-313, MCA, is amended to read:

"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the ~~property~~ *ability of the buyer to perform on any purchase offer*;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(c) factors motivating either party to buy or sell; and

(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written listing agreement is nevertheless obligated to comply with the requirements of this chapter.

(11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;

(iii) disclosure required by law or to prevent the commission of a crime;

(iv) the information being disclosed by someone other than the broker or salesperson; and

(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the

licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.”

Section 6. Section 37-51-321, MCA, is amended to read:

“37-51-321. Revocation or suspension of license – initiation of proceedings – grounds. (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, in addition to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an applicant or a person licensed under this chapter:~~

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker’s own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term “realtor” by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the ~~broker’s or salesperson’s licensee’s~~ possession ~~belonging~~ when the money belongs to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person’s dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner’s authorized agent or on terms other than those authorized by the owner or the owner’s authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) *as a broker or a salesperson*, negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) *as a salesperson*, representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) *unless exempted*, paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker ~~or~~, a salesperson, *or a property manager*;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners; or

(v) failing to disclose to all customers and clients, including owners and tenants, the ~~broker's or salesperson's~~ *licensee's* contractual relationship while managing properties for owners.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

~~(c)(3) The license of a broker, or salesperson, or property manager who violates this subsection (2) section may be suspended or revoked sanctioned as provided in subsection (1) 37-1-312.~~

Section 7. Section 37-51-603, MCA, is amended to read:

"37-51-603. Qualification of property manager applicants – examination – form of licenses. (1) The board ~~by rule~~ shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(4) *If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to the applicant.*

~~(4) The license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.~~

~~(5) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board."~~

Section 8. Section 37-51-605, MCA, is amended to read:

"37-51-605. Property manager's office – notice of change of address.

A property manager shall maintain a ~~fixed office~~ *designated physical address* in this state at which ~~a copy of the original~~ *current* license of the property manager must be prominently displayed. *The designated address of the property manager must be indicated on the property manager's license. If the property manager changes the location of the office, the* ~~The~~ property manager shall notify the department of ~~the~~ *a new address before removal or within 10 days after the change of address removal. After receipt of the information required under this section, the department shall issue a license to the property manager for the new location for the unexpired period."*

Section 9. Repealer. The following section of the Montana Code Annotated is repealed:

37-51-305. License -- delivery -- display -- pocket card.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved February 17, 2017

CHAPTER NO. 28

[HB 166]

AN ACT AUTHORIZING CERTAIN NONPROFIT RETAIL FOOD ESTABLISHMENTS TO USE WILD GAME MEAT IN MEALS SERVED FOR NO CHARGE; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 7-21-4202, 50-2-116, AND 50-50-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Nonprofit retail food establishments authorized to serve wild game and fish meat – rulemaking – definitions. (1) A retail food establishment that is owned and operated by a nonprofit organization may use commercially processed meat from wild game and fish taken in Montana in meals served to individuals at no charge.

(2) The department may adopt food safety rules for the implementation of this section.

(3) For the purposes of this section, the following terms apply:

(a) "Commercially processed meat" means wild game or fish processed by a person, firm, or corporation that has a valid meat establishment license pursuant to 81-9-201.

(b) "Nonprofit organization" means an organization exempt from taxation under section 26 U.S.C. 501(c)(3), as amended.

(c) "Retail food establishment" has the same meaning as provided in 50-50-102.

Section 2. Section 7-21-4202, MCA, is amended to read:

“7-21-4202. Regulation of foodstuffs. The city or town council has power to:

(1) provide for and regulate the inspection of flour, meal, and all provisions and oils; ~~to~~

(2) regulate the inspection of milk, water, butter, lard, and other provisions; ~~to~~

(3) *except as provided in [section 1],* regulate the vending of meat, poultry, fish, game, and vegetables; ~~to and~~

(4) restrain and punish the forestalling of provisions.”

Section 3. Section 50-2-116, MCA, is amended to read:

“50-2-116. Powers and duties of local boards of health. (1) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) appoint and fix the salary of a local health officer who is:

(i) a physician;

(ii) a person with a master’s degree in public health; or

(iii) a person with equivalent education and experience, as determined by the department;

(b) elect a presiding officer and other necessary officers;

(c) employ qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings at least quarterly and hold special meetings as necessary;

(f) identify, assess, prevent, and ameliorate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing;

(iii) isolation and quarantine measures;

(iv) diagnosis, treatment, and case management;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information;

(viii) education and training of health professionals; or

(ix) other public health measures as allowed by law;

(g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;

(h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;

(i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;

(j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are

identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with *[section 1]* or rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.”

Section 4. Section 50-50-103, MCA, is amended to read:

“50-50-103. Department authorized to adopt rules – advisory council. (1) *Except as provided in subsection (3), to protect public health, the department may adopt rules relating to:*

(a) the operation of retail food establishments and cottage food operations. The rules may address sanitation standards related to food, personnel, food equipment and utensils, and facilities and may address other controls, construction and fixtures, and housekeeping.

(b) licensure of retail food establishments; and

(c) registration for cottage food operations, including the fees to be charged for registration. The department shall specify in rule any fees for farmer’s markets and cottage food operations that may be imposed by a regulatory authority.

(2) The department may adopt rules regarding permitting fees, statewide standards, plans to be provided by mobile food establishments as part of a mobile food establishment's licensing requirements, and an appeals process at the state and local levels.

(3) The department and local boards of health may not adopt rules or ordinances, respectively, that prohibit:

(a) the sale of cottage food products; or

(b) *the use of commercially processed wild game or fish meat in meals served by nonprofit retail food establishments pursuant to [section 1].*

(4) (a) The department shall establish a food safety task force or advisory council to assist in the development of administrative rules or to review any proposed legislation related to the provisions of this chapter.

(b) The task force or advisory council must be composed of equal numbers of representatives of the departments of public health and human services, agriculture, and livestock and of registered sanitarians from local regulatory authorities and no more than six members of the public. Each department head shall appoint two of the public members and confer with other department heads to provide geographic representation. Each public member must be an owner or employee of a licensed retail food establishment or a representative of the food industry.

(c) The department shall present administrative rules and any legislation to be proposed by the department to the task force or advisory council prior to its proposal or introduction. When the department learns of proposed legislation related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 50, part 1, and the provisions of Title 50, chapter 50, part 1, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved February 17, 2017

CHAPTER NO. 29

[HB 221]

AN ACT REMOVING A REDUNDANCY RELATED TO PUBLIC RECORDS OF MUNICIPALITIES; AMENDING SECTIONS 7-1-4121 AND 7-1-4149, MCA; AND REPEALING SECTION 7-1-4144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4121, MCA, is amended to read:

"7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4127 and, 7-1-4129 through 7-1-4143, and 7-1-4145 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations on the government.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the presiding officer in a government adopting the commission-presiding officer form, the town presiding officer in a government adopting the town meeting form, the commission acting as a body in a

government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity that incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body if one is appointed, carries out the duties of the records administrator.

(11) "Officer" means a person holding a position with a municipality that is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act that is adopted and approved by a municipality and that has effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(4).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department, office, or political subdivision.

(19) "Public property" means any property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) “Reproduced” means the act of reproducing a design on any surface by any process.

(22) “Resolution” means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) “Service” means an authorized function or activity performed by local government.

(24) “Structure” means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.”

Section 2. Section 7-1-4149, MCA, is amended to read:

“7-1-4149. Applicability. (1) Except as provided in subsection (2), a provision of 7-1-4121 through 7-1-4127 and, 7-1-4129 through 7-1-4143, and 7-1-4145 through 7-1-4148 applies only in the absence of other laws governing the same subject matter.

(2) The governing body may by ordinance adopt the procedures and provisions contained in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4148 and make them applicable to all proceedings before the body.”

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

7-1-4144. Public records.

Approved February 17, 2017

CHAPTER NO. 30

[SB 10]

AN ACT REPEALING THE REFUNDABLE INCOME TAX CREDIT FOR STATEWIDE EQUALIZATION PROPERTY TAX LEVIES ON A PRINCIPAL RESIDENCE; AND REPEALING SECTION 15-30-2336, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

15-30-2336. Refundable income tax credit -- statewide equalization property tax levies on principal residence -- rules.

Approved February 17, 2017

CHAPTER NO. 31

[SB 41]

AN ACT ELIMINATING SPECIFIC PROACTIVE PREVENTATIVE LIVESTOCK LOSS MEASURES ELIGIBLE FOR GRANTS; AND AMENDING SECTION 2-15-3111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3111, MCA, is amended to read:

“2-15-3111. Livestock loss reduction program. The livestock loss board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf and grizzly bear predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf and grizzly bear predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, ~~including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts,~~ and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant.”

Approved February 17, 2017

CHAPTER NO. 32

[SB 53]

AN ACT REPEALING THE TAX INCENTIVE FOR INCREASED BIODIESEL PRODUCTION; AMENDING SECTION 17-7-502, MCA; REPEALING SECTION 15-70-601, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; ~~15-70-601~~; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622;

20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)"

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

15-70-601. Biodiesel production incentive -- appropriation.

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved February 17, 2017

CHAPTER NO. 33

[SB 68]

AN ACT REVISING LICENSING AND REGULATIONS FOR WHOLESALE DISTRIBUTORS, THIRD-PARTY LOGISTICS PROVIDERS,

MANUFACTURERS, AND REPACKAGERS OF PRESCRIPTION DRUGS; INCORPORATING REFERENCES TO FEDERAL DRUG SUPPLY CHAIN AND OTHER FEDERAL LAWS; DEFINING "OUTSOURCING FACILITY" AND PROVIDING OTHER DEFINITIONS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS FOR WHOLESALE DISTRIBUTORS AND THIRD-PARTY LOGISTICS PROVIDERS; AND AMENDING SECTIONS 37-7-101, 37-7-201, 37-7-601, 37-7-602, 37-7-603, 37-7-604, 37-7-605, 37-7-606, 37-7-609, AND 37-7-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) Except as provided in 37-7-105, the term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

(12) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(13) "Device" has the same meaning as defined in 37-2-101.

(14) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

~~(15) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.~~

(15) "Distribute" or "distribution" means the sale, purchase, trade, delivery, handling, storage, or receipt of a drug or device and does not include administering or dispensing a prescription drug, pursuant to section 353(b)(1), or a new animal drug, pursuant to section 360b(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(16) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (16)(a), (16)(b), or (16)(c).

(17) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(18) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(19) "FDA" means the United States food and drug administration.

~~(19)~~(20) "Health care facility" has the meaning provided in 50-5-101.

~~(20)~~(21) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

~~(21)~~(22) "Hospital" has the meaning provided in 50-5-101.

~~(22)~~(23) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

~~(23)~~(24) “Long-term care facility” has the meaning provided in 50-5-101.

~~(24)~~(25) (a) “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

~~(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.~~

~~(25)~~(26) “Medicine” means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(27) “Outsourcing facility” means a facility at one geographic location or address that:

(a) engages in compounding of sterile drugs;

(b) has elected to register as an outsourcing facility with FDA; and

(c) complies with all the requirements of section 353b of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

~~(26)~~(28) “Participant” means a physician’s office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

~~(27)~~(29) “Patient counseling” means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

~~(28)~~(30) “Person” includes an individual, partnership, corporation, association, or other legal entity.

~~(29)~~(31) “Pharmaceutical care” means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient’s symptoms, or arresting or slowing of a disease process.

~~(30)~~(32) “Pharmacist” means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person’s name the term “R.Ph.”.

~~(31)~~(33) “Pharmacy” means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

~~(32)~~(34) “Pharmacy technician” means an individual who assists a pharmacist in the practice of pharmacy.

~~(33)~~(35) “Poison” means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

~~(34)~~(36) “Practice of pharmacy” means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement, except as provided in 37-7-105, and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

~~(35)~~(37) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

~~(36)~~(38) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

~~(37)~~(39) "Prescriber" has the same meaning as provided in 37-7-502.

~~(38)~~(40) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section ~~503(b)~~ 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ~~353~~ 301 *et seq.*

~~(39)~~(41) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

~~(40)~~(42) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

~~(41)~~(43) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

~~(42)~~(44) "Registry" means the prescription drug registry provided for in 37-7-1502.

~~(43)~~(45) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(44)~~(46) "Wholesale" means a sale for the purpose of resale."

Section 2. Section 37-7-201, MCA, is amended to read:

"37-7-201. Organization – powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in this state, including but not limited to:

(a) establishing minimum standards for:

- (i) equipment necessary in and for a pharmacy;
 - (ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;
 - (iii) specifications for the facilities, *including outsourcing facilities, as well as for the* environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;
 - (iv) monitoring drug therapy; and
 - (v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;
- (b) requesting the department to inspect, at reasonable times:
- (i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and
 - (ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.
- (c) regulating:
- (i) the training, qualifications, employment, licensure, and practice of interns;
 - (ii) the training, qualifications, employment, and registration of pharmacy technicians; and
 - (iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;
- (d) examining applicants and issuing and renewing licenses of:
- (i) applicants whom the board considers qualified under this chapter to practice pharmacy;
 - (ii) pharmacies and certain stores under this chapter;
 - (iii) wholesale ~~drug~~ distributors; ~~and~~
 - (iv) *third-party logistics providers as defined in 37-7-602; and*
 - (v) persons engaged in the manufacture and distribution of drugs or devices;
- (e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;
- (f) issuing certificates of “certified pharmacy” under this chapter;
- (g) establishing and collecting license and registration fees;
- (h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(h) may not be construed to expand on the definition of the practice of pharmacy.
- (i) establishing a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the

state unless the board finds that there is no qualified treatment program in this state.

(j) making rules for the conduct of its business;

(k) performing other duties and exercising other powers as this chapter requires; *and*

(l) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; *and*

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; *and*

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care.”

Section 3. Section 37-7-601, MCA, is amended to read:

“37-7-601. Scope and purpose. This part applies to a ~~person or entity engaged in~~ the wholesale distribution, *third-party logistics, manufacturing, or repackaging* of prescription drugs in this state. The purpose of this part is to implement the federal Prescription Drug Marketing Act of 1987 *and the Drug Quality and Security Act of 2013, which includes but is not limited to the Drug Supply Chain Security Act*, by providing minimum standards, terms, and conditions for licensing by the department of persons or entities engaged in *the wholesale distributions distribution, third-party logistics, manufacturing, or repackaging* of prescription drugs.”

Section 4. Section 37-7-602, MCA, is amended to read:

“37-7-602. Definitions. As used in this part, the following definitions apply:

(1) ~~“Blood” means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.~~

(2) ~~“Blood component” means that part of blood separated by physical or mechanical means:~~

(1) (a) *“Dispenser” means a retail pharmacy, a hospital pharmacy, a group of chain pharmacies under common ownership and control that do not act as a wholesale distributor, or any other person authorized by law to dispense or administer prescription drugs, and the affiliated warehouses or distribution centers of the entities listed in this subsection (1)(a), if they are under common ownership and control and do not act as a wholesale distributor.*

(b) *The term does not include a person who dispenses only products used in animals in accordance with FDA laws and regulations.*

(3) ~~“Drug sample” means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.~~

(4)(2) ~~“Manufacturer” means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device.:~~

(a) a person approved by application to the FDA to manufacture a product as defined in section 360eee of the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq., or a biologic pursuant to 42 U.S.C. 262;

(b) a person who manufactures a product as defined in section 360eee of the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq., or a biologic pursuant to 42 U.S.C. 262 that is not the subject of an approved application or license by the FDA;

(c) a colicensed partner of a person described in subsection (2)(a) or (2)(b) that obtains the product directly from a person described in subsection (2)(a), (2)(b), or (2)(d); or

(d) an affiliate of a person described in subsection (2)(a), (2)(b), or (2)(c) that receives the product directly from a person described in subsection (2)(a), (2)(b), or (2)(c).

~~(5)~~(3) "Prescription drug" has the same meaning as provided in 37-7-101.

(4) "Repackager" means a person who owns or operates an establishment that repacks and relabels a product or a package for:

(a) further sale; or

(b) distribution without a further transaction.

(5) "Third-party logistics provider" or "3PL" means an entity that provides or coordinates warehousing or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of a product but does not take ownership of the product or have responsibility to direct the sale or disposition of the product.

(6) "Transaction" has the same meaning as provided in section 360eee of the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq.

~~(6)~~(7) (a) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient.

(b) The term does not include:

(i) intracompany sales;

(ii) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(iii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (6)(b)(iv), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(v) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (6)(b)(v), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(vi) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(vii) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(viii) the sale, purchase, or trade of blood and blood components intended for transfusion the exclusions listed in section 353(e)(4) of the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq.

(7)(8) “Wholesale drug distributor” means a person or entity, *other than a manufacturer, a manufacturer’s colicensed partner, a third-party logistics provider, or a repackager, who is engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.*”

Section 5. Section 37-7-603, MCA, is amended to read:

“37-7-603. Prohibited purchase or receipt of drugs – dispensing and distribution restrictions on wholesale drug distributors – penalty.

(1) Except as otherwise provided, it is unlawful for a person to knowingly purchase or receive a prescription drug from a source other than a person or entity licensed under this part.

(2) Licensed wholesale drug distributors, *third-party logistics providers, manufacturers, and repackers other than pharmacies* may not dispense or distribute prescription drugs directly to patients, *except when the licensed wholesale distributor is also a licensed pharmacy.*

(3) A person who violates the provisions of this section is guilty of a misdemeanor.”

Section 6. Section 37-7-604, MCA, is amended to read:

“37-7-604. Wholesale drug distributor, third-party logistics provider, manufacturer, and repackager licensing requirements – fee – federal compliance. (1) A person or distribution outlet may not act as a wholesale drug distributor, *third-party logistics provider, manufacturer, or repackager* without first obtaining a license from the board and paying the license fee.

(2) A license may not be issued or renewed for a wholesale drug distributor, *third-party logistics provider, manufacturer, or repackager* to operate in this state unless the applicant:

(a) agrees to abide by federal and state law and to comply with the rules adopted by *FDA and* the board; and

(b) pays the license fee set by the board.

(3) The board in its discretion may require that a separate license be obtained for:

(a) each facility directly or indirectly owned or operated by the same business entity within the state; or

(b) a parent entity with divisions, subsidiaries, or affiliates within the state if operations are conducted at more than one location and joint ownership and control exists among all entities.

(4) ~~In order to obtain and maintain a wholesale drug distributorship in this state, an~~ *An applicant for a license under this section or for a license renewal shall provide written documentation to the board attesting that the applicant has maintained and will continue to maintain:*

(a) adequate storage conditions and facilities;

(b) minimum liability and other insurance that may be required by applicable federal or state law;

(c) a functioning security system that includes:

(i) an after hours central alarm or comparable entry detection system;

(ii) restricted access to the premises;

(iii) comprehensive employee applicant screening; and

(iv) safeguards against employee theft;

(d) a system of records setting forth all activities of wholesale drug distribution, *third-party logistics, manufacturing, or repackaging* as defined in ~~37-7-602~~ for at least a period of the 2 previous years. The system of records must be accessible, as defined by board regulations, for inspections authorized by the board.

(e) *a list of active entity* principals, including officers, directors, primary shareholders, and management executives, who shall at all times demonstrate and maintain their responsibility for conducting the business in conformity with sound financial practices as well as state and federal law;

(f) complete, updated information, to be provided to the board as a condition for obtaining and ~~retaining~~ *renewing* a license, pertaining to each wholesale drug distributor, *third-party logistics provider, manufacturer, or repackager* to be licensed, including but not limited to:

(i) all pertinent corporate license information, if applicable; and

(ii) other information regarding ownership, principals, key personnel, and facilities;

(g) a written protocol of procedures and policies that ~~assures~~ *ensures* preparation by the ~~wholesale drug distributor~~ *applicant or licensee under this section* for the handling of security or operational problems, including but not limited to those caused by:

(i) natural disaster or government emergency;

(ii) inventory inaccuracies or product shipping and receiving;

(iii) insufficient inspections for all incoming and outgoing product shipments;

(iv) lack of control of outdated or other unauthorized products;

(v) inappropriate disposition of returned goods; and

(vi) failure to promptly comply with product recalls; and

(h) operations in compliance with all federal requirements applicable to a ~~wholesale drug distribution~~ *distributor, third-party logistics provider, manufacturer, or repackager*.

(5) An agent or employee of a licensed wholesale drug distributor, *third-party logistics provider, manufacturer, or repackager* need not be licensed as a wholesale drug distributor, *third-party logistics provider, manufacturer, or repackager*.

(6) For purposes of this section, all rules and regulations promulgated by the board must conform to the ~~wholesale drug distributor, third-party logistics provider, manufacturer, and repackager~~ *licensing guidelines and rules* formally adopted by the United States food and drug administration *FDA*. If a conflict arises between a ~~food and drug administration~~ *FDA* guideline or rule and a rule or regulation of the board, the former controls.

(7) *Wholesale distributors, third-party logistics providers, manufacturers, and repackers licensed by the board shall comply with the tracing requirements defined in sections 353 and 360eee of the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq., and all corresponding guidelines and rules.*"

Section 7. Section 37-7-605, MCA, is amended to read:

"37-7-605. Out-of-state wholesale drug distributor licensing requirements. (1) An out-of-state wholesale drug distributor, *third-party logistics provider, manufacturer, or repackager* may not conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on an approved form.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state ~~wholesale drug distributor~~ *license*.

(4) A person acting as principal or agent for an out-of-state ~~wholesale drug distributor~~ licensee may not sell or distribute *prescription* drugs in this state unless the *wholesale distributor, third-party logistics provider, manufacturer, or repackager* has obtained a license.”

Section 8. Section 37-7-606, MCA, is amended to read:

“37-7-606. Licenses. ~~The~~ A license for a ~~wholesale drug distributors~~ distributor, *third-party logistics provider, manufacturer, or repackager* is effective during the period specified by department rule.”

Section 9. Section 37-7-609, MCA, is amended to read:

“37-7-609. Board access to ~~wholesale drug records.~~ Wholesale ~~drug~~ distributors, *third-party logistics providers, manufacturers, and repackagers* may keep records at a central location apart from the principal office of the wholesale ~~drug~~ distributor, *third-party logistics provider, manufacturer, and repackager* or the location where the drugs are stored and from where they are shipped, ~~provided that if the records must be~~ *are* available for inspection within 2 working days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drug recordkeeping.”

Section 10. Section 37-7-610, MCA, is amended to read:

“37-7-610. Rulemaking authority. (1) The board shall adopt rules and regulations necessary to carry out the purpose and enforce the provisions of this part, *including FDA guidelines and rules pursuant to the Drug Quality and Security Act of 2013, which includes the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq., to implement:*

(a) *product tracing, reporting, and other requirements compliant with FDA uniform national policy; or*

(b) *national standards for the licensing of wholesale distributors, third-party logistics providers, manufacturers, and repackagers.*

(2) If the rules and regulations conflict with the wholesale ~~drug distribution~~ distributor, *third-party logistics provider, manufacturer, or repackager* guidelines or rules promulgated by the ~~United States food and drug administration~~ *FDA*, the latter control.”

Section 11. Criminal background check for wholesale distributors and third-party logistics providers. (1) Each applicant for licensure as a wholesale distributor or a third-party logistics provider shall submit a full set of the applicant’s fingerprints to the board for the purpose of obtaining a state and federal criminal history background check.

(2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and federal criminal history background check.

(3) The board may require a licensee renewing a license to submit a full set of the licensee’s fingerprints to the board for the purpose of obtaining a state and federal criminal history background check.

(4) The Montana department of justice may share the fingerprint data obtained under subsection (1) or (3) with the federal bureau of investigation.

Section 12. Bond requirements for wholesale distributors. An applicant for licensure as a wholesale distributor and all wholesale distributors renewing licenses shall comply with the surety bond requirements as provided in rule.

Section 13. Codification instruction. [Sections 11 and 12] are intended to be codified as an integral part of Title 37, chapter 7, part 6, and the provisions of Title 37, chapter 7, part 6, apply to [sections 11 and 12].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 17, 2017

CHAPTER NO. 34

[SB 84]

AN ACT REVISING THE PADDLEFISH ROE DONATION PROGRAM; EXTENDING THE PROGRAM; NAMING THE PADDLEFISH GRANT ADVISORY COMMITTEE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 87-4-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-601, MCA, is amended to read:

“87-4-601. Sale of fish or spawn. (1) Until June 30, ~~2018~~ 2028, a person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the burlington northern railroad bridge at Glendive to the North Dakota state line during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (2) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

(2) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(3) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (2) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(4) (a) Thirty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(b) Seventy percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. ~~An~~ A *paddlefish grant* advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (2), two area local government representatives, and two representatives of area anglers. The advisory committee shall solicit and review historical, cultural, recreational,

and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.

(5) A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609.”

Approved February 17, 2017

CHAPTER NO. 35

[HB 89]

AN ACT REQUIRING THAT THE OFFICE OF STATE PUBLIC DEFENDER ESTABLISH A HOLISTIC DEFENSE PILOT PROJECT; EXTENDING EXISTING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Task Force on State Public Defender Operations was established under House Bill No. 627 (2015) to develop a long-term organizational plan for the Office of State Public Defender that will allow the office to provide effective assistance of counsel to those who qualify; and

WHEREAS, as part of its work the task force learned about holistic defense and how it is being used successfully by the Confederated Salish and Kootenai Tribes of the Flathead Nation; and

WHEREAS, holistic defense is based on a model of providing public defender services that address the underlying causes and circumstances that drive people into the criminal justice system and the consequences of that involvement by offering comprehensive legal representation, social work support, and interdisciplinary advocacy for the client; and

WHEREAS, the ultimate goal of holistic defense is to reduce recidivism, keep individuals from becoming stuck in revolving doors within the criminal justice system because of social and economic stresses, mitigate the collateral consequences for families and communities, and save taxpayer dollars in the long term; and

WHEREAS, the task force determined that a pilot project would help determine the merits of using a holistic defense approach in Montana’s public defender system.

Be it enacted by the Legislature of the State of Montana:

Section 1. Holistic defense pilot project. (1) The office shall establish a holistic defense pilot project within existing resources as provided in this section.

(2) (a) The pilot project must be established in up to four public defender offices.

(b) The first two holistic defense pilot project locations established pursuant to this section must be in regions where a social worker or resource advocate has already been hired pursuant to the regular workload within the region.

(3) The pilot project must be based on accepted best practices for holistic defense and the following four pillars of holistic defense:

(a) seamless access to legal and nonlegal services that meet client legal and social support needs;

(b) dynamic interdisciplinary communication;

(c) advocates with interdisciplinary skill sets; and

(d) a robust understanding of and connection to the community served.

(4) The pilot project must involve the establishment in the participating offices of an interdisciplinary team that provides a comprehensive client-centered approach to address a client’s legal needs as well as any underlying social

concerns that may have contributed to the client's involvement in the criminal justice system.

(b) As needed and appropriate, the interdisciplinary team may include:

- (i) a public defender;
- (ii) a social worker;
- (iii) an investigator;
- (iv) a paralegal; and
- (v) support staff.

(5) To provide for sound analysis and evaluation of pilot project outcomes, the office shall:

(a) establish a set of performance criteria that will be evaluated and a plan for how the criteria will be evaluated;

(b) ensure that there is a baseline level of data on each of the criteria to be evaluated; and

(c) ensure that a community assessment is done to form the basis of the holistic defense approach in each of the communities participating in the pilot project.

(6) The office shall seek any grant funding and any technical assistance that may be available for holistic defense programs.

(7) The office shall provide a report on the pilot project each interim to the law and justice interim committee established in 5-5-226. The report must cover the project's status, evaluation plan, and any measurable outcomes.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2017.

Section 4. Termination. [This act] terminates June 30, 2019.

Approved February 20, 2017

CHAPTER NO. 36

[HB 105]

AN ACT ADOPTING AN INTERSTATE PHYSICAL THERAPY LICENSURE COMPACT, WHICH INCLUDES RULEMAKING PROVISIONS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS OF APPLICANTS; AND AMENDING SECTION 37-11-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Physical therapy licensure compact enactment – provisions. The Physical Therapy Licensure Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1 - PURPOSE

The purpose of this compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state in which the patient or client is located at the time of the patient or client encounter with a physical therapist or physical therapist assistant. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

The compact is designed to achieve the following objectives:

(1) increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

- (2) enhance the states' ability to protect the public's health and safety;
- (3) encourage the cooperation of member states in regulating multistate physical therapy practice;
- (4) support spouses of relocating military members;
- (5) enhance the exchange of licensure, investigative, and disciplinary information between member states; and
- (6) allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2 - DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions apply:

(1) "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty pursuant to 10 U.S.C. 1209 and 1211 or on full-time National Guard duty pursuant to 32 U.S.C 520(f).

(2) "Adverse action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

(3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes but is not limited to substance abuse issues.

(4) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state in which the patient or client is located at the time of the patient or client encounter with the physical therapist or physical therapist assistant.

(5) "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work.

(6) "Data system" means a repository of information about licensees, including examination, licensure, investigative information, compact privilege, and adverse action.

(7) "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

(8) "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them, by the commission.

(9) "Home state" means the member state that is the licensee's primary state of residence.

(10) "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

(11) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

(12) "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

(13) "Member state" means a state that has enacted the compact.

(14) "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

(15) "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

(16) “Physical therapist assistant” means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

(17) “Physical therapy”, “physical therapy practice”, and “the practice of physical therapy” means the care and services provided by or under the direction and supervision of a licensed physical therapist.

(18) “Physical therapy compact commission” or “commission” means the national administrative body whose membership consists of all states that have enacted the compact.

(19) “Physical therapy licensing board” or “licensing board” means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(20) “Remote state” means a member state other than the home state in which a licensee is exercising or seeking to exercise the compact privilege.

(21) “Rule” means a regulation, principle, or directive promulgated by the commission that has the force of law.

(22) “State” means any state, commonwealth, district, or territory of the United States that regulates the practice of physical therapy.

SECTION 3 - STATE PARTICIPATION IN THE COMPACT

(1) To participate in the compact, a state shall:

(a) participate fully in the commission’s data system, including using the commission’s unique identifier as defined in rules;

(b) have a mechanism in place for receiving and investigating complaints about licensees;

(c) notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(d) fully implement a criminal background check requirement, within a time frame established by rule, by:

(i) receiving the results of the federal bureau of investigation record search on criminal background checks; and

(ii) using the results in making licensure decisions in accordance with subsection (2);

(e) comply with the rules of the commission;

(f) use a recognized national examination as a requirement for licensure as provided by rules of the commission; and

(g) have continuing competence requirements as a condition for license renewal.

(2) Upon adoption of this statute, the member state has the authority to obtain biometric-based information from each physical therapy licensure applicant and to submit this information to the federal bureau of investigation for a criminal background check in accordance with 28 U.S.C. 534 and 42 U.S.C. 14616.

(3) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(4) A member state may charge a fee for granting a compact privilege.

SECTION 4 - COMPACT PRIVILEGE

(1) To exercise the compact privilege under the terms and provisions of the compact, the licensee:

(a) must be licensed under Title 37, chapter 11, in the home state;

(b) may not have an encumbrance on any state license;

(c) must be eligible for a compact privilege in any member state in accordance with subsections (4), (7), and (8) of this section;

(d) may not have had any adverse action against any license or compact privilege within the previous 2 years;

(e) shall notify the commission that the licensee is seeking the compact privilege within a remote state;

(f) shall pay any applicable fees, including any state fee, for the compact privilege;

(g) shall meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and

(h) shall report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

(2) The compact privilege is valid until the expiration date of the home license. The licensee shall comply with the requirements in subsection (1) to maintain the compact privilege in the remote state.

(3) A licensee providing physical therapy in a remote state under the compact privilege must function within the laws and regulations of the remote state.

(4) A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specified period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(5) If a home state license is encumbered, the licensee loses the compact privilege in any remote state until the following occur:

(a) the home state license is no longer encumbered; and

(b) 2 years have elapsed from the date of the adverse action.

(6) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements in subsection (1) of this section to obtain a compact privilege in any remote state.

(7) If a licensee's compact privilege in any remote state is removed, the individual loses the compact privilege in any remote state until the following occur:

(a) the specific period has ended for which the compact privilege was removed;

(b) all fines have been paid; and

(c) 2 years have elapsed from the date of the adverse action.

(8) Once the requirements of subsection (7) have been met, the licensee must meet the requirements in subsection (1) to obtain a compact privilege in a remote state.

SECTION 5 - ACTIVE DUTY MILITARY PERSONNEL OR SPOUSE OF MILITARY

A licensee who is active duty military or who is the spouse of an individual who is active duty military may designate one of the following as the home state:

(1) home of record;

(2) permanent change of station (PCS); or

(3) state of current residence if that state is different than the PCS state or home of record.

SECTION 6 - ADVERSE ACTIONS

(1) A home state has exclusive power to impose adverse action against a license issued by the home state.

(2) A home state may take adverse action based on the investigative information of a remote state, as long as the home state follows its own procedures for imposing adverse action.

(3) Nothing in this compact may override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that participation in an alternative program is to remain nonpublic if required by the member state's laws. Member states shall require licensees who enter any alternative program in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from the other member state.

(4) Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

(5) A remote state has the authority to:

(a) take adverse actions as set forth in Section 4(4) against a licensee's compact privilege in the state;

(b) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before that court. The issuing authority shall pay any witness fees, travel, expenses, mileage, and other fees required by the service statutes of the state where the witness or evidence is located.

(c) recover from the licensee, if otherwise permitted by state law, the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

(6) (a) In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative information, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

SECTION 7 - ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

(1) The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission.

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(2) (a) Each member state has and is limited to one delegate selected by that member state's licensing board.

(b) The delegate must be a current member of the licensing board who is a physical therapist, a physical therapist assistant, a public member, or the board administrator.

(c) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state board shall fill any vacancy occurring in the commission.

(e) Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

(f) A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(g) The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.

(3) The commission has the power and duty to:

(a) establish the fiscal year of the commission;

(b) establish bylaws;

(c) maintain its financial records in accordance with the bylaws;

(d) meet and take actions that are consistent with the provisions of this compact and the bylaws;

(e) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all member states.

(f) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law is not affected;

(g) purchase and maintain insurance and bonds;

(h) borrow, accept, or contract for services of personnel, including but not limited to employees of a member state;

(i) hire employees, elect or appoint officers, fix compensation, define duties, grant the employees or officers the appropriate authority to carry out the purposes of the compact and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(j) accept any and all donations and grants of money, equipment, supplies, materials, and services and to receive, use, and dispose of the items and services listed under this subsection (3)(j) while at all times avoiding any appearance of impropriety or conflict of interest.

(k) lease on its own behalf, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use any property, real, personal, or mixed while at all times avoiding any appearance of impropriety;

(l) sell, convey, mortgage, pledge, lease to others, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) establish a budget and make expenditures;

(n) borrow money;

(o) appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and other interested persons who may be designated in this compact and the bylaws;

(p) provide and receive information from and cooperate with law enforcement agencies;

(q) establish and elect an executive board; and

(r) perform other functions necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physical therapy licensure and practice.

(4) The executive board has the power to act on behalf of the commission according to the terms of this compact.

(a) The executive board is composed of nine members, of which:

(i) seven voting members are to be elected by the commission from the current membership of the commission;

(ii) one ex-officio, nonvoting member must be from the recognized national physical therapy professional association; and

(iii) one ex-officio, nonvoting member must be from the recognized membership organization of the physical therapy licensing boards.

(b) The ex-officio members are to be selected by their respective organizations.

(c) The commission may remove any member of the executive board as provided in bylaws.

(d) The executive board shall meet at least annually.

(e) The executive board has the following duties and responsibilities:

(i) recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states, including annual dues, and any commission compact fees charged to licensees for the compact privilege;

(ii) ensure compact administration services are appropriately provided, contractual or otherwise;

(iii) prepare and recommend the budget;

(iv) maintain financial records on behalf of the commission;

(v) monitor compact compliance of member states and provide compliance reports to the commission;

(vi) establish additional committees as necessary; and

(vii) perform other duties as provided in rules or bylaws.

(5) (a) All meetings of the commission must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Section 9.

(b) The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss:

(i) noncompliance of a member state with its obligations under the compact;

(ii) the employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) current, threatened, or reasonably anticipated litigation;

(iv) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(v) accusing any person of a crime or formally censuring any person;

(vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) disclosure of information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) disclosure of investigative records compiled for law enforcement purposes;

(ix) disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(x) matters specifically exempted from disclosure by federal or member state statute.

(c) If a meeting, or portion of a meeting, is closed pursuant to subsection (5)(b), the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(d) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for those actions, including a description of the views expressed. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(6) The commission:

(a) shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities;

(b) may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services;

(c) may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of operations and activities of the commission and its staff. The assessment or fees must be in a total amount sufficient to cover the commission's annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(d) may not incur obligations of any kind prior to securing the funds adequate to meet the obligations, and the commission may not pledge the credit of any of the member states, except by and with the authority of the member state;

(e) shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

(7) (a) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subsection (7)(a) is to be construed as prohibiting that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(b) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 8 - DATA SYSTEM

(1) The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

- (a) identifying information;
- (b) licensure data;
- (c) adverse actions against a license or compact privilege;
- (d) nonconfidential information related to alternative program participation;
- (e) any denial of application for licensure, and the reason for the denial;

and

(f) other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(3) Investigative information pertaining to a licensee in any member state is only available to other party states.

(4) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state is available to any other member state.

(5) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(6) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

SECTION 9 - RULEMAKING

(1) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted under this section. Rules and amendments become binding as of the date specified in each rule or amendment.

(2) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule, then that rule has no further force and effect in any member state.

(3) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(4) Prior to promulgation and adoption of a final rule by the commission, and at least 30 days in advance of the meeting at which the rule is to be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) on the website of the commission or other publicly accessible platform; and

(b) on the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(5) The notice of proposed rulemaking must include:

(a) the proposed time, date, and location of the meeting in which the rule is to be considered and voted upon;

(b) the text of the proposed rule or amendment and the reason for the proposed rule;

(c) a request for comments on the proposed rule from any interested person; and

(d) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(6) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.

(7) The commission shall grant an opportunity for a public hearing before the commission adopts a rule or amendment if a hearing is requested by:

- (a) at least 25 persons;
- (b) a state or federal governmental subdivision or agency; or
- (c) an association having at least 25 members.

(8) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held by electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

(b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings must be recorded and copies of the recording are to be made available on request.

(d) This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(9) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(10) If no written notice of intent to attend the public hearing by an interested party is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(11) The commission shall, by majority vote of all members, take final action on the proposed rule and determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(12) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible but not later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- (a) meet an imminent threat to public health, safety, or welfare;
- (b) prevent a loss of commission or member state funds;
- (c) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
- (d) protect public health and safety.

(13) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for the purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision takes effect

without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

SECTION 10 - OVERSIGHT, DISPUTE RESOLUTION, AND
ENFORCEMENT

(1) (a) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(c) The commission is entitled to receive service of process in any proceeding described in subsection (1)(b) of this section and has standing to intervene in that proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, the compact, or promulgated rules.

(2) (a) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:

(i) written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

(ii) remedial training and specific technical assistance regarding the default.

(b) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(c) Termination of membership in the compact is to be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(d) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(e) The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(f) The defaulting state may appeal the action of the commission by petitioning the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.

(3) (a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

(b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) (a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) By majority vote, the commission may initiate legal action in the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.

(c) The remedies in this section are not to be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

SECTION 11 - DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact is effective in this state on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from this compact by enacting a statute repealing the compact.

(a) A member state's withdrawal does not take effect until 6 months after enactment of the repealing statute.

(b) Withdrawal does not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements in [section 1] prior to the effective date of withdrawal.

(4) This compact may not be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(5) This compact may be amended by the member states. An amendment to this compact does not become effective and binding upon any member state until the amendment is enacted into the laws of all member states.

SECTION 12 - CONSTRUCTION AND SEVERABILITY

This compact is to be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of this compact to any government, agency, person, or circumstance is not affected by the holding of invalidity. If this compact is held contrary to the constitution of any party state, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Section 2. Criminal background check. (1) As provided in 37-1-307, the board is authorized to require each applicant for licensure to submit a full set of the applicant's fingerprints to the board for the purpose of obtaining a state and federal criminal history background check.

(2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and federal criminal history background check.

(3) The board may require licensees renewing their licenses to submit a full set of their fingerprints to the board for the purpose of obtaining a state and federal criminal history background check.

(4) The Montana department of justice may share the fingerprint data gathered under this section with the federal bureau of investigation.

Section 3. Section 37-11-307, MCA, is amended to read:

"37-11-307. Applicants licensed in other states. (1) *The board is subject to the physical therapy compact described in [section 1] and shall extend compact privileges as described by [section 1].*

(2) The board may, in its discretion, authorize the department to issue a physical therapist or physical therapist assistant license, without examination, on the payment of the required fee established by the board, to an applicant who is a physical therapist or physical therapist assistant licensed under the laws of another state or territory *that is not part of the compact* if the applicant has met the same requirements as applicants licensed by examination under this chapter. An applicant licensed in another state or territory *that is not part of the compact, if licensed* by examination other than the examination recognized under this chapter, may be considered for licensure by the board if the requirements for a physical therapy license or a physical therapist assistant license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 11, and the provisions of Title 37, chapter 11, apply to [sections 1 and 2].

Approved February 20, 2017

CHAPTER NO. 37

[HB 125]

AN ACT REVISING LAWS PERTAINING TO WORKFORCE INVESTMENT AND INNOVATION; CHANGING REFERENCES TO THE WORKFORCE INVESTMENT ACT OF 1998 TO THE WORKFORCE INNOVATION AND OPPORTUNITY ACT; REVISING MEMBERSHIP REQUIREMENTS ON THE MONTANA STATE WORKFORCE INNOVATION BOARD; REVISING PERFORMANCE INDICATOR REQUIREMENTS; REVISING COORDINATION OF SERVICE REQUIREMENTS; ELIMINATING LOCAL WORKFORCE INVESTMENT BOARDS; AMENDING SECTIONS 2-18-1203, 39-51-2116, 39-51-2602, 53-2-1202, 53-2-1203, 53-2-1205, 53-2-1206, AND 53-2-1207, MCA; REPEALING SECTION 53-2-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1203, MCA, is amended to read:

“2-18-1203. General protection. (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature is entitled to:

(a) access to any job retraining and career development programs provided by the state through the service delivery areas dislocated worker programs under the Workforce ~~Investment~~ *Innovation and Opportunity Act of 1998*, 29 U.S.C. ~~2801~~ *3101*, et seq., provided that the employee begins participating in a program within 1 year after the elimination of the employee’s position; and

(b) inclusion in a special job register from which all agencies may attempt to hire employees prior to seeking applications from the general public. Nothing in this section requires an agency to attempt to hire employees from the special job register prior to seeking applications from the general public. An employee’s eligibility to participate in the job register terminates 2 years from the effective date of the employee’s layoff or 2 years from the date of the employee’s completion of job training provided under subsection (1)(a), whichever is later.

(2) Each state agency shall pay to the department of labor and industry a set amount that is equal to the department’s average cost of providing the retraining and development services for state employees in the previous fiscal year for each involuntarily terminated state employee who requests access to any job training and career development program provided by the department.”

Section 2. Section 39-51-2116, MCA, is amended to read:

“39-51-2116. Participation in worker training program – eligibility for training benefits. (1) Subject to the requirements of this section, training benefits are available to an individual who has exhausted all rights to regular unemployment compensation benefits and who is attending an approved worker training program.

(2) An unemployed individual who is participating and making satisfactory progress in a state-approved training program or a job training program authorized by the Workforce ~~Investment~~ *Innovation and Opportunity Act of 1998* that is necessary for the individual’s reemployment is eligible to receive training benefits if, as determined by the department:

(a) the individual was:

(i) separated from a declining occupation; or

(ii) involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual’s place of employment;

(b) the training enhances the individual’s marketable skills and earning power; and

(c) the training is targeted to those industries or skills that are in demand within the labor market.

(3) Benefits must be paid under this section at the individual’s average weekly benefit amount during the applicable benefit year and under the same terms and conditions as regular benefits.

(4) Benefits are payable under this section only for weeks during which the individual is attending an approved training program.

(5) An employer’s account may not be charged for payment of benefits to an individual under this section.”

Section 3. Section 39-51-2602, MCA, is amended to read:

“39-51-2602. Approved training under federal programs. (1) Notwithstanding any other provisions of this chapter, an otherwise eligible individual may not be denied benefits for any week:

(a) because of participation in training approved under section 236(a)(1) of the federal Trade Act of 1974 (19 U.S.C. 2296) or under Title I-B of the

Workforce Investment Innovation and Opportunity Act, of 1998 (29 U.S.C. 2801 3101, et seq.), when the individual is receiving Title I-B services as a dislocated worker;

(b) because of participation in approved training described in subsection (1)(a) by reason of leaving work to enter the training if the work left is not suitable employment; or

(c) because of the application to any week in training of the provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974."

Section 4. Section 53-2-1202, MCA, is amended to read:

"53-2-1202. Definitions. For the purposes of this part, unless the context otherwise requires, the following definitions apply:

(1) "Act" means the federal Workforce Investment Innovation and Opportunity Act of 1998, Public Law 105-220 113-128, (29 U.S.C. 2801 3101, et seq.);

(2) "Local board" means a local workforce investment board provided for in 53-2-1204.

(2) "Board" means the Montana state workforce innovation board provided for in 53-2-1203.

(3) "One-stop center" means one or more entities designated or certified under section 121(d) of the Act, (29 U.S.C. 2841(d) 3151(d)).

(4) "One-stop delivery system" means a system under which entities responsible for administering separate workforce investment, educational, and other human resource programs and funding sources collaborate to create a seamless system of service delivery to enhance access to the programs' services and improve long-term employment outcomes for individuals receiving assistance.

(5) "State board" means the state workforce investment board provided for in 53-2-1203.

(6) "Workforce investment area" means a local area designated by the governor in accordance with section 116 of the Act (29 U.S.C. 2831):"

Section 5. Section 53-2-1203, MCA, is amended to read:

"53-2-1203. State Montana state workforce investment innovation board – membership – duties. (1) There is a *Montana* state workforce investment innovation board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) subject to 5-5-234, two members of the house of representatives, one from the majority party and one from the minority party, and two members of the senate, one from the majority party and one from the minority party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) ~~represent businesses with employment opportunities that reflect the employment opportunities in Montana;~~

(ii) ~~chief elected officials of local government;~~

(iii) ~~representatives of labor organizations;~~

(iv) ~~representatives of individuals and organizations who have experience with respect to youth activities;~~

(v) ~~representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;~~

(vi) ~~representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:~~

(A) ~~the department of labor and industry;~~

(B) ~~the department of public health and human services;~~

(C) ~~the office of the commissioner of higher education; and~~

(D) ~~the office of public instruction;~~

(vii) ~~at least one representative of military veterans; and~~

(viii) ~~other representatives whom the governor may designate.~~

(3) ~~The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act, 29 U.S.C. 2821.~~

(4) ~~The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.~~

(2) *The board:*

(a) *must consist of individuals who fulfill the membership roles and selection criteria required by section 101(b)(1) of the Act, 29 U.S.C. 3111(b)(1); and*

(b) *may include individuals who fulfill the membership roles and selection criteria permitted by section 101(b)(1) of the Act, 29 U.S.C. 3111(b)(1).*

(5)(3) ~~The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.~~

(6)(4) ~~The state board shall perform the functions described in section 111 101(d) of the Act, 29 U.S.C. 2821 3111(d)."~~

Section 6. Section 53-2-1205, MCA, is amended to read:

"53-2-1205. Workforce investment development program. (1) There is a workforce investment *development* program to implement the provisions of Title I-B of the Act, (29 U.S.C. 2801 3101, et seq.), to operate the one-stop delivery system to adults, dislocated workers, and youth.

(2) The one-stop delivery system must be administered in accordance with a ~~5-year strategic statewide workforce investment~~ *4-year combined state* plan that meets the requirements of section ~~112 103~~ of the Act, (29 U.S.C. ~~2822 3113~~). The ~~strategic statewide combined state~~ plan must be created with the assistance of the state board.

(3) ~~There must be a 5-year local workforce investment plan for each workforce investment area. The local plan must be created by the local board. The local plan must meet the requirements of the state plan and section 116 of the Act (29 U.S.C. 2831)."~~

Section 7. Section 53-2-1206, MCA, is amended to read:

"53-2-1206. Performance indicators. (1) ~~The 5-year strategic statewide workforce investment~~ *The 4-year combined state* plan must contain performance indicators to measure the effectiveness and operation of the programs identified in Title I-B of the Act, (29 U.S.C. ~~2801 3101~~, et seq.): The ~~strategic statewide combined state~~ plan must contain the expectation of continuous improvement, as negotiated with the secretary of the U.S. department of labor, and conform to the requirements of section ~~112 103~~ of the Act, (29 U.S.C. ~~2822 3113~~).

~~(2) Each 5-year local workforce investment plan must include a description of the local levels of performance to be used to measure the performance of the local area and to be used by the local board for measuring the performance of the one-stop delivery system and the one-stop centers providing services in the local area. The local plan must include the performance accountability systems required by section 136 of the Act (29 U.S.C. 2871)."~~

Section 8. Section 53-2-1207, MCA, is amended to read:

"53-2-1207. Coordination of services. (1) The state board shall assist the governor in developing and continuously improving the statewide system of activities that are provided within the state workforce investment development systems by:

(a) developing linkages in order to ensure coordination among the programs described in section 121(b) of the Act, (29 U.S.C. 2841(b) 3151(b)); and

~~(b) reviewing local plans, which include a description of the one-stop delivery system to be established or designated in the local area.~~

~~(2) Local boards shall coordinate services provided to Indians with providers offering services pursuant to section 166 of the Act (29 U.S.C. 2911) and providers offering services pursuant to the Indian Employment, Training and Related Services Demonstration Act of 1992, Public Law 102-477 (25 U.S.C. 3401)."~~

Section 9. Repealer. The following section of the Montana Code Annotated is repealed:

53-2-1204. Local workforce investment boards.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved February 20, 2017

CHAPTER NO. 38

[HB 138]

AN ACT REVISING INSURANCE LAWS PERTAINING TO INSURER PRODUCER APPOINTMENTS; ALLOWING APPOINTMENT BY AFFILIATION; ALLOWING APPOINTMENT THROUGH BUSINESS ENTITY AFFILIATION; REVISING APPOINTMENT NOTICE REQUIREMENTS; AMENDING SECTIONS 33-17-231 AND 33-17-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appointment by affiliation. (1) Unless prohibited by the insurer, an individual insurance producer or business entity insurance producer may satisfy the appointment requirements of 33-17-236(1) by affiliating with a business entity insurance producer that has been appointed directly by the insurer.

(2) A business entity insurance producer obtaining an appointment by affiliation under subsection (1) shall maintain a copy of each written affiliation agreement for 3 years following termination of the affiliation and make copies of the agreement available to the commissioner upon request.

(3) If an insurance producer is appointed by affiliation under subsection (1), the insurer is not required to file a separate notice of appointment for that insurance producer under 33-17-231(1) and 33-17-236.

(4) An appointment by affiliation under subsection (1) is effective on the date the insurance producer enters into an affiliation agreement.

(5) An insurance producer appointed by affiliation under this section is authorized to transact the kinds of insurance for which the business entity insurance producer directly appointed by the insurer is also authorized, except:

(a) an insurance producer appointed by affiliation may not transact kinds of insurance for which the insurance producer is not otherwise authorized; and

(b) the insurer may specify in writing those kinds of insurance the insurance producer may transact under the appointment.

Section 2. Section 33-17-231, MCA, is amended to read:

“33-17-231. Appointment of insurance producers – continuation and termination. (1) ~~Each~~ *Except as provided in [section 1], each* insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be electronically filed. The commissioner may adopt rules to implement electronic filing.

(2) ~~Each~~ *Except as provided in [section 1], each* appointment remains in effect until the insurance producer’s license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. The written notice may be electronically filed. The commissioner may adopt rules to implement electronic filing. Termination of the insurer’s authority in Montana also terminates the appointment.

(3) Subject to the insurance producer’s contract rights, an insurer may terminate an insurance producer’s appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer, *except that the insurer is not required to notify the commissioner of termination of an appointment by affiliation.* The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination.

(5) (a) An insurer that sells a qualified health plan in an exchange operating in this state shall appoint any producer who is certified by the commissioner pursuant to 33-17-243 and follows the appointment application process required by that insurer.

(b) To maintain the appointment, the producer shall maintain the producer’s certification and license in good standing.

(6) *An appointment by affiliation terminates automatically on termination of the affiliation.”*

Section 3. Section 33-17-236, MCA, is amended to read:

“33-17-236. Appointments of insurance producers by insurers. (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer unless the insurance producer is an appointed insurance producer of that insurer pursuant to this section. This does not prevent an insurance producer from obtaining and presenting a quotation from an insurer with whom the producer is not appointed. If the insurer consents, the insurer may bind coverage on a risk in accordance with 33-15-411 prior to the execution of an agency contract and policy issuance.

(2) ~~The~~ *Except as provided in [section 1], the* insurer shall, not later than 15 days from the date on which the agency contract is executed with a licensed

an insurance producer, file with the insurance department a written notice of appointment on a form prescribed by the insurance department. The notice may be electronically filed pursuant to rules adopted by the commissioner.

(3) Upon receipt of the notice of appointment, the insurance department shall verify that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer of the determination.

(4) (a) ~~An~~ Except as provided in [section 1], an appointment is effective on the earlier of the date of the executed agency contract or the date on which the insurer files the notice of appointment with the insurance department, unless the appointment is disapproved by the insurance department.

(b) A disapproved appointment is void on the date the department provides notification to the insurer.

(c) An appointment of which notice is not filed within 15 days of execution of the agency contract is not effective until the date that the insurer files the notice of appointment with the insurance department.

(5) ~~The~~ Except as provided in 33-17-231, the appointment is perpetual until canceled by the insurer."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 17, part 2, and the provisions of Title 33, chapter 17, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved February 20, 2017

CHAPTER NO. 39

[HB 67]

AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; DEFINING "EXTRA DUTY SERVICE"; REVISING FAMILY LAW ORDER PROVISIONS; REVISING CREDITABLE SERVICE PROVISIONS; REVISING PROVISIONS RELATED TO CALCULATING AVERAGE FINAL COMPENSATION; REVISING PROVISIONS RELATED TO CANCELLATION OF ALLOWANCES AND RESTORATION OF MEMBERSHIP FOR DISABILITY RETIREES; REVISING DEATH PAYMENT PROVISIONS; AMENDING SECTIONS 19-20-101, 19-20-305, 19-20-401, 19-20-403, 19-20-805, 19-20-905, AND 19-20-1002, MCA; REPEALING SECTION 19-20-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means a member's highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

(4) "Beneficiary" means one or more persons formally designated by a member, or retiree, or *alternate payee* to receive a retirement allowance or payment upon the death of the member, or retiree, or *alternate payee* except for a joint annuitant.

(5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(6) "Creditable service" is that service defined by 19-20-401.

(7) "Date of termination" or "termination date" means the last date on which a member performed service in a position reportable to the retirement system.

(8) (a) "Earned compensation" means, except as limited by subsections (8)(b) and (8)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

(i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits;

(iv) any noncash benefit provided by an employer to or on behalf of a member;

(v) termination pay unless included pursuant to 19-20-716;

(vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;

(viii) incentive or bonus payments paid to a member that are not part of a series of annual payments; or

(ix) any similar payment or reimbursement made to or on behalf of a member by an employer.

(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(9) "Employer" means:

(a) the state of Montana;

(b) a public school district, as provided in 20-6-101 and 20-6-701;

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;

(g) the Montana youth challenge program, as defined in 10-1-101;

(h) a state youth correctional facility, as defined in 41-5-103;

(i) the Montana university system;
(j) a community college; or
(k) any other agency, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

(10) *“Extra duty service” means service in an educational services capacity that is not compensated as part of the normally assigned duties and functions of a school district teacher, administrator, or other employee but is regularly assigned to one or more school district teachers, administrators, or other employees as part of the regular operation of the school district’s curricular and extracurricular programs.*

(11) *“Full-time service” means service that is:*

(a) at least 180 days in a fiscal year;
(b) at least 140 hours a month during at least 9 months in a fiscal year; or
(c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.

(12) *“Internal Revenue Code” has the meaning provided in 15-30-2101.*

(13) *“Joint annuitant” means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.*

(14) *“Member” means a person who has an individual account in the annuity savings account. Unless otherwise specified, “member” refers to a tier one member or a tier two member. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.*

(15) *“Normal form” or “normal form benefit” means a monthly retirement benefit payable during the lifetime of the retired member.*

(16) *“Normal retirement age” means an age no earlier than 60 years of age.*

(17) *“Part-time service” means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.*

(18) *“Position reportable to the retirement system” means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.*

(19) *“Regular interest” means interest at a rate set by the retirement board in accordance with 19-20-501(2).*

(20) *“Retired”, “retired member”, or “retiree” means a person who is considered in retired member status under the provisions of 19-20-810.*

(21) *“Retirement allowance” or “retirement benefit” means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.*

(22) *“Retirement board” or “board” means the retirement system’s governing board provided for in 2-15-1010.*

(23) *“Retirement system”, “system”, or “plan” means the teachers’ retirement system of the state of Montana provided for in 19-20-102.*

(24) *“Service” means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.*

(24)(25) “Termination” or “terminate” means that the employment relationship between the member and the member’s employer has been terminated as required in 19-20-810.

(25)(26) (a) “Termination pay” means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(26)(27) “Tier one member” means a person who became a member before July 1, 2013, and who has not withdrawn the member’s account balance.

(27)(28) “Tier two member” means a person who became a member on or after July 1, 2013, or who, after withdrawing the member’s account balance, became a member again after July 1, 2013.

(28)(29) “Vested” means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

(29)(30) “Written application” or “written election” means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary.”

Section 2. Section 19-20-305, MCA, is amended to read:

“19-20-305. Alternate payees – family law orders. (1) A participant in a retirement system may have the participant’s rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) “actuarially equivalent amount” means the portion of the participant’s benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee’s lifetime;

(b) “alternate payee” means the former spouse of the member or retiree who is entitled to an actuarially equivalent amount or a fixed amount of the member’s or retiree’s retirement benefit;

(c) “family law order” means a certified copy of ~~a judgment, decree, or an order of a court with competent jurisdiction on a form prescribed and provided by the retirement system~~ concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant’s ~~payment rights in a right to payments from the~~ retirement system to an alternate payee in compliance with this section; and

(d) “participant” means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, date of birth, *current phone number*, and social security number. An alternate payee’s rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee’s rights or interests may be modified only by a family law order amending the family law order that established the right or interest *or by a full renunciation of the alternate payee’s rights by the alternate payee.*

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment that is not available to the affected participant under the retirement system or that would require

administration in a manner different from the administrative processes used by the retirement system for administration of retirement benefits in general; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable for the life of the alternate payee; or

(ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

(b) (i) When a family law order directs payment of an actuarially equivalent amount payable to the alternate payee, either the amount of the participant's retirement benefit to be transferred to the alternate payee must be expressed as a percentage share of the retirement benefit payable to the participant or the percentage share must be readily determinable based on the factors provided in the family law order. The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).

(ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

(iii) *A copy of the alternate payee's birth certificate must be submitted with the family law order.*

(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a lump-sum payment up to the total fixed amount or equal to the percentage share of the participant's benefit transferred to the alternate payee as directed in the family law order.

(7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned between the participant and the alternate payee receiving an actuarially equivalent amount in the same manner as determined under subsection (5)(b)(i).

(8) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order and approval of the family law order by the retirement system.

(9) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(10) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section.

(12) (a) In every circumstance, an actuarially equivalent amount payable to an alternate payee must terminate upon the death of the alternate payee.

The amount may not be devised, bequeathed, or otherwise transferred by the alternate payee.

(b) A family law order may expressly provide that a fixed amount payable to an alternate payee may be transferred upon the death of the alternate payee to a beneficiary designated by the alternate payee. If a family law order does not expressly authorize an alternate payee to designate a beneficiary or if there is no beneficiary designation on file with the retirement system at the time of the alternate payee's death, the fixed amount payable to the alternate payee reverts to the participant or to the joint annuitant or beneficiary of the participant. A fixed amount payable to an alternate payee may not be devised, bequeathed, or otherwise transferred by the alternate payee in any other manner.

(13) The retirement system shall give effect to a family law order in a manner that conforms with all other applicable law pertaining to the administration of the retirement system. A family law order may not be construed to provide rights or benefits to any person beyond those rights or benefits expressly provided by law."

Section 3. Section 19-20-401, MCA, is amended to read:

"19-20-401. Creditable service. (1) The creditable service of a member begins on the date of the member's employment in a capacity prescribed for eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) Subject to 19-20-405, the creditable service of a member includes the following:

(a) ~~each year period of active membership service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced in a position reportable to the retirement system as described in 19-20-302 and credited as provided in this section;~~

(b) any creditable service awarded by the retirement board under 19-20-402 for out-of-state employment;

(c) any creditable service awarded by the retirement board under 19-20-403 for employment while on leave;

(d) any creditable service awarded by the retirement board under 19-20-404 for service in the military, the red cross, or the merchant marine;

(e) any creditable service awarded by the retirement board under 19-20-408 for employment in private schools;

(f) any creditable service awarded by the retirement board under 19-20-409 for service transferred after October 1, 1989, from the public employees' retirement system;

(g) any creditable service awarded by the retirement board under 19-20-410 for extension service employment;

(h) any creditable service awarded by the retirement board under 19-20-411 for absence because of employment-related injury; and

(i) any creditable service awarded by the retirement board under 19-20-426 for service provided under the university system retirement program.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) *Creditable service may be awarded only for a period of membership service or purchased service for which all required contributions and interest, if applicable, have been paid.*

(5) *All accrued creditable service must be forfeited upon withdrawal from the retirement system and may not be reinstated unless the member redeposits the withdrawn contributions as set forth in 19-20-427.*

(6) *Creditable service must be awarded on the basis of a fiscal year beginning July 1 and ending June 30 regardless of the member's term of employment service or benefit accrual as established in an employment agreement, in an employer policy, or in another manner and regardless of the term of the employer's school year or fiscal year.*

(7) *Creditable service must be credited based on the full-time or part-time service of the member, as follows:*

(a) *Service provided over 7 or more hours in a day is a full-time day.*

(b) *Full-time service is service that is at least 180 days in a fiscal year, at least 140 hours a month during 9 months in a fiscal year, or full-time under an alternative school calendar adopted by a school board that is less than 180 days but meets minimum accreditation requirements of 1,080 hours.*

(c) *Part-time service is service that is less than full-time. Part-time creditable service must be calculated based on the total number of hours, days, or months reported to the retirement system in each fiscal year, divided by the number of hours, days, or months of equivalent full-time service.*

(8) *Creditable service and earned compensation credit must be awarded for extra duty service subject to the following:*

(a) *A member who is credited with full-time creditable service without consideration of the extra duty service may not be awarded additional creditable service for the extra duty service, and the extra duty compensation must be reported and credited as earned compensation to the member.*

(b) *A member who is credited with less than full-time creditable service without consideration of the extra duty service must be awarded additional creditable service and compensation credit for the extra duty service, and time worked must be reported and creditable service and compensation credit awarded as provided in subsection (8)(d).*

(c) *A member who is not employed in a position reportable to the retirement system other than to perform extra duty service must be awarded additional creditable service and compensation credit for the extra duty service, and time worked must be reported and creditable service and compensation credit awarded as provided in subsection (8)(d).*

(d) (i) *If the member is employed by the employer to perform service other than the extra duty service, whether or not in a position reportable to the retirement system, and is compensated for that service on an hourly or daily basis, the employer must report the actual number of hours or days worked in extra duty service with compensation at the hourly or daily rate of pay that the employee earns for service other than extra duty service. The compensation reported for extra duty service must include any increase in the rate of pay or total compensation required to be paid for overtime. Creditable service must be awarded on the basis of the actual time worked in extra duty service.*

(ii) *If the member is not employed by the employer to perform service other than the extra duty service and the extra duty service is compensated at an hourly or daily rate of pay, the employer must report the actual hours or days worked, the hourly or daily rate of pay, and the total compensation paid for the extra duty service. Creditable service must be awarded based on the actual time worked in extra duty service.*

(iii) *If the member is not employed by the employer to perform service other than the extra duty service and the extra duty service is compensated on a single fee or stipend basis:*

(A) *the employer must report the total fee or stipend paid for the extra duty service and must provide the retirement system with the employer's base rate of pay for an entry level teacher for the fiscal year in which the extra duty service is provided; and*

(B) *creditable service must be awarded for the extra duty service based on the following calculations:*

(I) *the base rate of pay must be divided by 187 to determine a daily rate of pay;*

(II) *the total fee or stipend must be divided by the daily rate of pay to determine the number of days eligible for creditable service; and*

(III) *the number of days eligible for creditable service must be divided by 180 to determine the portion of a year to be credited as creditable service for the extra duty service.*

(9) *Creditable service may not be awarded in excess of full-time service for any period of time regardless of the amount of time actually worked in the time period. No more than 1 day of creditable service may be awarded for any calendar day, no more than 1 month of creditable service may be awarded for any calendar month, and no more than 1 year of creditable service may be awarded for any fiscal year. Service may not be carried over or otherwise reported for the accrual of creditable service in any month other than the month in which the service was actually performed.*

~~(4)(10)~~ For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time fiscal year of membership service on which a service purchase cost will be calculated, the member's compensation must be annualized to calculate the service purchase cost.

~~(5)(11)~~ A member may not purchase creditable service under this part after retirement benefit payments to the member have started, even if the member returns to active member status."

Section 4. Section 19-20-403, MCA, is amended to read:

"19-20-403. Creditable service for employment while on leave.

(1) (a) Subject to 19-20-405, a member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave following a break in service.

(b) To be eligible to purchase ~~the service under this section~~, a member:

(i) must be vested in the retirement system;

(ii) must have been ~~a~~ *an active member* prior to the leave; and

(iii) must have ~~completed~~ *earned at least 1 full year of creditable service* in active membership in the retirement system subsequent to the member's leave.

(2) (a) For each ~~year period~~ of service to be credited, a member who became a member before July 1, 1989, shall contribute ~~for each year of service to be purchased~~ an amount equal to the combined employer and employee contributions for the member's first full year's salary earned in a position reportable to the retirement system after the member's return from leave, plus interest.

(b) For each ~~year period~~ of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the

actuarial cost of the service based on the most recent actuarial valuation of the system.

~~(3)~~(c) The interest on contributions required under subsection (2)(a) must be paid:

~~(a)~~(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

~~(b)~~(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

~~(4)~~(d) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(3) *Subject to 19-20-405, a member who is eligible under subsection (5) and who contributes to the retirement system as provided in subsection (6) may receive up to 2 years of creditable service for unpaid inservice leave.*

(4) (a) *To be eligible for purchase as inservice leave, the leave must be:*

(i) *a period of temporary absence from work in a position reportable to the retirement system, whether full leave or intermittent leave and whether the leave is provided solely at the discretion of the employer or is required to be provided pursuant to generally applicable state or federal law; and*

(ii) *unpaid. Inservice leave is unpaid to the extent that the employer is not compensating the member for the period of absence from work. If the inservice leave is intermittent leave or is partially paid full leave, the leave is unpaid to the extent that any compensation received for the day, week, or month that includes the leave is less than the amount of compensation the member would have earned but for the leave.*

(b) *Inservice leave does not include:*

(i) *a period of leave or other absence from work that is included as part of the member's regular term of employment, such as personal days, vacation leave, sick leave, summer break, or other nonwork days;*

(ii) *a period of time for which creditable service may be purchased or credited under any other section of this part;*

(iii) *a period designated as a leave of absence pursuant to an oral or written settlement agreement or other agreement between the member and the employer to resolve an employment dispute and resulting in:*

(A) *termination of the member's employment; or*

(B) *other circumstances in which the member and employer do not actually intend for the member to return to regular employment in the preleave position;*
or

(iv) *a leave of absence after which the member does not actually return to regular employment in the preleave position.*

(5) *A member is eligible to purchase inservice leave if the member:*

(a) *was regularly employed by the preleave employer with a regular work schedule in a position reportable to the retirement system;*

(b) *remained either employed or in a job-attached status with the preleave employer with a definite date specified to return to work with the preleave employer; and*

(c) *returned to regular work with the preleave employer at the end of the inservice leave.*

(6) (a) *An eligible member may purchase inservice leave at any time after returning to regular work with the preleave employer in a position reportable to the retirement system, subject to the following:*

(i) A service purchase agreement for the inservice leave must be established for all leave that may be purchased for a fiscal year following the end of that fiscal year.

(ii) The service must be purchased and will be credited beginning with the earliest date of the leave.

(iii) The amount of leave that may be purchased may not exceed the amount of time that the member would have worked but for the leave as specified in a written employment contract. If the member was not employed under a written employment contract, the amount of leave purchased may not result in the member receiving total creditable service in the fiscal year in which the service is being purchased that exceeds the amount of creditable service the member accrued in the last fiscal year preceding the inservice leave during which the member accrued membership service that did not include purchased service.

(b) To purchase inservice leave, the member shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system subject to the following:

(i) Upon completing the purchase, the member must receive earned compensation credit equal to the sum of any earned compensation reported by the employer plus the amount of compensation attributable to the purchased leave.

(ii) Failure to return for any reason to regular work in the preleave position on the specified return date or at the end of the inservice leave must be considered a break in service subject to the leave purchase requirements of subsections (1) and (2)."

Section 5. Section 19-20-805, MCA, is amended to read:

"19-20-805. Calculation of average final compensation. (1) Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to:

(a) a tier one member in 3 consecutive fiscal years of full-time service that yields the highest average; or

(b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average.

(2) (a) The earned compensation of a tier one member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service during the 5 years preceding termination been full-time service.

(b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding the member's termination is the compensation that the member would have earned in the 5 years used to calculate average final compensation had the member's part-time service during the 7 years preceding termination been full-time service.

(3) To determine the compensation that the member would have earned under subsection (2), the compensation reported must be divided by the part-time service credited to the member's account.

(4) (a) Subject to subsection (4)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service if a tier one member or 5 consecutive years of full-time service if a tier two member reported to the teachers' retirement system, the member's average final compensation must be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

~~(5) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(8)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.~~

~~(b) If benefits have been converted to earned compensation as described in subsection (5)(a) but have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)."~~

Section 6. Section 19-20-905, MCA, is amended to read:

"19-20-905. Cancellation of allowance and restoration of membership. (1) ~~If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302 position reportable to the retirement system and earns compensation in any fiscal year in excess of the limitation provided in 19-20-904, the retiree's retirement allowance must cease. If the retiree is employed full-time by an employer covered under this chapter, and the retiree must again become an active member of the retirement system effective on the first day of the month following the month in which the earnings limitation was exceeded.~~

(2) ~~If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member."~~

Section 7. Section 19-20-1002, MCA, is amended to read:

“19-20-1002. Payments upon death of retiree. (1) In the event of the death of a retired member, a death benefit of \$500 is payable to the joint annuitant or designated beneficiary.

(2) *Except as provided in subsection (4), if the deaths of a retired member and of the joint annuitant or all designated beneficiaries occur before the total retirement allowance payments made to the retired member and to the joint annuitant or all designated beneficiaries equal the amount of the member’s accumulated contributions at the time of the member’s retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the estate of the joint annuitant or to the estate of the longest-surviving beneficiary.*

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.

(4) *If the retired member elected a 10-year or 20-year period certain and life retirement allowance, the following provisions apply:*

(a) *If benefits remain payable upon the death of the retired member, the monthly benefit amount will be paid for the remainder of the period certain to the retired member’s designated beneficiary or beneficiaries.*

(b) *If benefits remain payable upon the death of the retired member’s last surviving designated beneficiary, a lump-sum distribution of the amount actuarially determined by the retirement system to be the present value of the remainder of the benefits payable for the period certain must be paid to the court-appointed personal representative of the last surviving beneficiary’s estate on behalf of the estate. If the last surviving beneficiary’s estate is not probated, the payment must be made to the last surviving beneficiary’s next of kin as set forth in 19-20-717.”*

Section 8. Repealer. The following section of the Montana Code Annotated is repealed:

19-20-204. Board’s policy governing creditable service.

Section 9. Effective date. [This act] is effective July 1, 2017.

Approved February 22, 2017

CHAPTER NO. 40

[HB 68]

AN ACT REVISING PUBLIC EMPLOYEE RETIREMENT SYSTEM MEMBERSHIP ELECTION PROVISIONS FOR EMPLOYEES HIRED BY THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTION 19-21-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-21-201, MCA, is amended to read:

“19-21-201. Participation in program. (1) Except as provided in ~~subsection (2)~~ *this section*, academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the program instead of the teachers’ retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the program unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) ~~An~~ *Except as provided in subsection (3), an* eligible person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired, *subject to subsection (7); or*

(ii) become a member of the program.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

~~(d)(3)~~ A person is ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system pursuant to subsection (1) or to remain in the public employees' retirement system *or the teachers' retirement system* pursuant to ~~this~~ subsection (2).

~~(e)(4)~~ *The An* election *under this section* must be exercised by filing a written irrevocable election with the teachers' retirement system *or the public employees' retirement system* and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

~~(f)(5)~~ If an eligible ~~officer or staff member~~ *person* fails to exercise ~~the an~~ election, ~~as provided by~~ *under* this section, ~~that the~~ person shall remain or become a member of the teachers' retirement system *or the public employees' retirement system*.

~~(g)(6)~~ An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

~~(7)~~ *Beginning July 1, 2017, if a person making an election under subsection (2)(b) is an active, inactive, or retired member of both the public employees' retirement system and the teachers' retirement system, the person may only elect, under (2)(b)(i), to remain a member of the system to which the position is reportable under the regular participation criteria specified in 19-3-401 or 19-20-302."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 22, 2017

CHAPTER NO. 41

[HB 150]

AN ACT CLARIFYING RESIDENT HUNTING AND FISHING LICENSE CRITERIA FOR MEMBERS OF THE ARMED FORCES AND THEIR SPOUSES AND DEPENDENTS; AMENDING SECTIONS 87-2-102 AND 87-2-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-102, MCA, is amended to read:

“87-2-102. Resident defined. In determining whether a person is a resident for the purpose of issuing resident hunting, fishing, and trapping licenses, the following provisions apply:

(1) (a) A member of the regular armed forces of the United States, a member’s *spouse or* dependent, as defined in 15-30-2115, who resides in the member’s Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(i) the member was a resident of Montana under the provisions of subsection (4) ~~at the time the member entered the armed forces~~ and continues to meet the residency criteria of subsections (4)(b) through (4)(e); or

(ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member’s spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a “home of record” or “home of residence” in that member’s armed forces records does not determine the member’s residency for purposes of this section.

(b) A member of the regular armed forces of the United States who is otherwise considered a Montana resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping privileges in another state or country.

(2) A person who has physically resided in Montana as the person’s principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person’s principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person’s principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) except as provided in subsection (1)(b), the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a postsecondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status."

Section 2. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) Except for a youth who qualifies for a license pursuant to 87-2-805(4) or who has been issued an apprentice hunting certificate pursuant to 87-2-810, a hunting license may not be issued to a person born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:

(a) a Montana hunter safety and education course established in subsection (4) or (6);

(b) a hunter safety course in any other state or province; or

(c) a Montana hunter safety and education course that qualifies the person for a provisional certificate as provided in 87-2-126.

(2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's ~~dependents~~ *spouse or dependent*, as defined in 15-30-2115, who reside in the member's Montana household, unless the person authorized to issue the license determines proof of completion of a hunter safety course approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to a person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 22, 2017

CHAPTER NO. 42

[HB 233]

AN ACT REVISING DRUG PRODUCT SELECTION LAWS TO INCLUDE BIOLOGICAL PRODUCTS; PROVIDING DEFINITIONS; REQUIRING REPORTING OF DRUG PRODUCT SELECTION; AND AMENDING SECTIONS 37-7-502, 37-7-504, AND 37-7-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-502, MCA, is amended to read:

"37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Biological product" has the meaning provided in 42 U.S.C. 262.

~~(3)~~(4) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

~~(4)~~(5) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

~~(5)~~(6) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

~~(6)~~(7) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of an official compendium recognized by the board.

(8) "*Interchangeable biological product*" means a biological product that the federal food and drug administration has:

(a) licensed; and

(b) (i) determined meets the standards for interchangeability pursuant to 42 U.S.C. 262(k)(4); or

(ii) determined is therapeutically equivalent as set forth in the latest edition of or supplement to the federal food and drug administration's approved drug products with therapeutic equivalence evaluations.

~~(7)~~(9) "Person" has the same meaning as provided in 37-7-101.

~~(8)~~(10) "Prescriber" means a medical practitioner, as defined in 37-2-101, licensed under the professional laws of the state to administer and prescribe medicine and drugs.

~~(9)~~(11) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of an official compendium recognized by the board.

~~(10)~~(12) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

~~(11)~~(13) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity."

Section 2. Section 37-7-504, MCA, is amended to read:

"37-7-504. General prohibition of drug product substitution. No person may substitute a drug *product* different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part."

Section 3. Section 37-7-505, MCA, is amended to read:

"37-7-505. Product selection permitted – limitation. (1) Except as limited by subsection (2) and unless instructed otherwise by the purchaser:

(a) ~~the~~ a pharmacist who receives a prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, strength, quantity, dose, and dosage form as the prescribed drug that is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable; and

(b) a pharmacist who receives a prescription for a specific biological product may select a less expensive interchangeable biological product.

(2) If, in the professional opinion of the prescriber, it is medically necessary that an equivalent drug product or *interchangeable biological product* not be selected, the prescriber may so indicate by certifying that the specific brand-name drug product *prescribed* or the specific brand-name biological product *prescribed* is medically necessary for that particular patient. In the

case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the *specific brand-name drug product prescribed or the specific biological product prescribed* is medically necessary.

(3) (a) *Within 5 business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall communicate the specific product provided to the patient, including the name of the product and the manufacturer, to the prescriber through any of the following electric records systems:*

- (i) *an interoperable electronic medical records system;*
- (ii) *an electronic prescribing technology;*
- (iii) *a pharmacy benefit management system; or*
- (iv) *a pharmacy record.*

(b) *Communication through an electronic records system as described in subsection (3)(a) is presumed to provide notice to the prescriber.*

(c) *If the pharmacist is unable to communicate pursuant to an electronic records system as provided in subsection (3)(a), the pharmacist shall communicate to the prescriber which biological product was dispensed to the patient using facsimile, telephone, electronic transmission, or other prevailing means.*

(d) *Communication is not required under this subsection (3) when:*

- (i) *there is no federal food and drug administration approved interchangeable biological product for the product prescribed; or*
- (ii) *a refill prescription is not changed from the product dispensed on the prior filling of the prescription.*

(4) *The pharmacist shall maintain a record of the biological product dispensed for at least 2 years."*

Approved February 22, 2017

CHAPTER NO. 43

[HB 82]

AN ACT REVISING THE VERTEBRATE PEST MANAGEMENT PROGRAM; REVISING THE LIST OF VERTEBRATE PESTS; ELIMINATING DEPARTMENT AUTHORITY TO PURCHASE CERTAIN SUPPLIES; ELIMINATING THE RODENTICIDE FUND AND USE OF THAT FUND; ELIMINATING THE VERTEBRATE PEST MANAGEMENT ADVISORY COUNCIL; AMENDING SECTION 80-7-1101, MCA; AND REPEALING SECTIONS 80-7-1103, 80-7-1104, 80-7-1105, AND 80-7-1107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-1101, MCA, is amended to read:

"80-7-1101. Department to operate vertebrate pest management program. The department may establish and operate organized and systematic programs for the management and suppression of vertebrate pests. Vertebrate pests are defined as *are defined as* jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, *snakes, voles, and predatory and nuisance birds.* ~~and the following predatory~~ *Depredatory* and nuisance birds are defined as: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when they are injurious to agriculture, other industries, and the public. For this purpose, the department may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals covering the methods and procedures to be followed in the management and suppression of these vertebrate pests,

the extent of supervision to be exercised by the department, and the use and expenditure of funds appropriated, when this cooperation is necessary to promote the management and suppression of vertebrate pests. Management is the correct identification of a vertebrate pest; recognition of its biology and environmental needs; assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress these damages, nuisances, or injuries; and evaluating the effects of these control methods. *This section does not apply to nongame wildlife managed or protected subject to Title 87, chapter 5, part 1.*"

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

- 80-7-1103. Purchase and sale of vertebrate pest management supplies.
- 80-7-1104. Vertebrate pest management advisory council.
- 80-7-1105. Rodenticide fund.
- 80-7-1107. Acceptance and expenditure of gifts, grants, and funds.

Approved February 23, 2017

CHAPTER NO. 44

[HB 91]

AN ACT PROVIDING AUTHORITY TO THE DEPARTMENT OF AGRICULTURE TO ADOPT REGULATIONS UNDER THE FEDERAL FDA FOOD SAFETY MODERNIZATION ACT; AND AMENDING SECTION 80-3-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-3-303, MCA, is amended to read:

"80-3-303. Powers and duties of department. (1) The department may: (a) enter a premises at any reasonable time to inspect produce for condition, for grade, or for determining compliance with the provisions of this part, *or for compliance with the FDA Food Safety Modernization Act, 21 U.S.C. 2201, et seq.*; and

(b) cooperate with and enter into agreements with governmental agencies of this state, agencies of other states, agencies of the U.S. government, and private associations, in furtherance of this part.

(2) (a) The department shall adopt rules necessary for the efficient implementation of this part.

(b) *The department may adopt by reference regulations adopted under the FDA Food Safety Modernization Act, 21 U.S.C. 2201, et seq.*"

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 23, 2017

CHAPTER NO. 45

[HB 111]

AN ACT REVISING LAWS REGARDING THE MAINTENANCE OF MINOR IN POSSESSION CONVICTION AND ADJUDICATION INFORMATION; ELIMINATING THE REQUIREMENT THAT A COURT REPORT A MINOR IN POSSESSION CONVICTION OR ADJUDICATION TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAINTAIN A LIST OF PERSONS CONVICTED OF THE OFFENSE OF MINOR IN POSSESSION; AND AMENDING SECTIONS 41-5-215, 41-5-216, AND 45-5-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-215, MCA, is amended to read:

“41-5-215. Youth court and department records – notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- (g) a member of a county interdisciplinary child information and school safety team formed under 52-2-211 who is not listed in this subsection (2);
- (h) members of a local interagency staffing group provided for in 52-2-203;
- ~~(i) persons allowed access to the reports referred to under 45-5-624(7);~~
- ~~(j)~~(i) persons allowed access under 42-3-203; and
- ~~(k)~~(j) persons conducting evaluations as required in 41-5-2003.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), subject to the provisions of subsection (3)(b) of this section, and according to the guidelines in subsection (3)(f) of this section, the chief probation officer or other designee from the district that has jurisdiction over the matter or the department of corrections for youth under the supervision of the department shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth’s past or current drug use or criminal activity if after an investigation has been completed:

- (i) a petition has been filed with the youth court or charges are filed in district court alleging a violation of any section in Title 45, chapter 5; or
- (ii) the youth has admitted the allegation and the acts involve any offense in which another youth was an alleged victim and the admitted activity has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) Notification under subsection (3)(a) terminates upon the end of the youth court's supervision or the discharge of the youth by the department of corrections.

(d) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(e) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(f) Notification to the school district under subsection (3)(a) must be provided to:

(i) the school district superintendent or the superintendent's designee in districts that employ a superintendent;

(ii) the building principal or the principal's designee in school districts where the building principal is the only administrator; or

(iii) the county superintendent in school districts that do not employ an administrator.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records – sharing and access to records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~reports referred to in 45-5-624(7)~~, or the information referred to in 46-23-508, in any instance

in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical

copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003.

(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to 50-46-307 or 50-46-308 is currently under youth court supervision.”

Section 3. Section 45-5-624, MCA, is amended to read:

“45-5-624. Possession of or unlawful attempt to purchase intoxicating substance – interference with sentence or court order.

(1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person’s possession an intoxicating substance. A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages. A person does not commit the offense if the person consumes or gains possession of an alcoholic beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for a first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person’s parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9) (8), if one is available; and

(C) if the person has a driver’s license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person’s parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9) (8), if one is available;

(C) if the person has a driver’s license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8) (7);

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person’s parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9) (8), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in

subsection (8) (7). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

(b) If the convicted person fails to complete the community-based substance abuse information course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense:

(i) shall be fined an amount not less than \$100 or more than \$300;

(ii) shall be ordered to perform 20 hours of community service; and

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9) (8);

(b) for a second offense:

(i) shall be fined an amount not less than \$200 or more than \$600;

(ii) shall be ordered to perform 40 hours of community service; and

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9) (8), which may, in the court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

(c) for a third or subsequent offense:

(i) shall be fined an amount not less than \$300 or more than \$900;

(ii) shall be ordered to perform 60 hours of community service;

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9) (8), which may, in the sentencing court's discretion and on recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

~~(7) A conviction or youth court adjudication under this section must be reported by the court to the department of public health and human services if treatment is ordered under subsection (8).~~

(8)(7) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) (8) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment, if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (9) (8).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

~~(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available on request to peace officers and to any court.~~

(9)(3) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) (7) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

~~(10)~~(9) Information provided or statements made by a person under 21 years of age to a health care provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel.

~~(11)~~(10) (a) A person under 21 years of age may not be charged or prosecuted under subsection (1) if:

(i) the person has consumed an intoxicating substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of seeking medical treatment;

(ii) the person accompanies another person under 21 years of age who has consumed an intoxicating substance and seeks medical treatment at a health care facility or contacts law enforcement personnel or an emergency medical service provider for the purpose of seeking medical treatment for the other person; or

(iii) the person requires medical treatment as a result of consuming an intoxicating substance and evidence of a violation of this section is obtained during the course of seeking or receiving medical treatment.

(b) For the purposes of this subsection ~~(11)~~ (10), the following definitions apply:

(i) "Health care facility" means a facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

(ii) "Medical treatment" means medical treatment provided by a health care facility or an emergency medical service. (See compiler's comments for contingent termination of certain text.)"

Approved February 23, 2017

CHAPTER NO. 46

[HB 130]

AN ACT REVISING LAWS RELATED TO COMMERCIAL FEED INSPECTION FEES AND REPORTING REQUIREMENTS; REVISING DEFINITIONS; AND AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-206, AND 80-9-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-9-101, MCA, is amended to read:

"80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "AOAC international" means the association of official analytical chemists.

(2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a ~~distributor~~ licensee or registrant and distinguishing it from that of others.

(3) (a) "Commercial feed" means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(4) “Contract feeder” means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to that person and under which that person’s remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

(5) “Customer formula feed” means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(6) “Distribute” means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(7) “Distributor” means a person who distributes commercial feed.

(8)(7) “Drug” means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

(9)(8) “Facility” means something that is built, installed, or established to serve a particular purpose.

(10)(9) “Feed ingredient” means each of the constituent materials making up a commercial feed or a noncommercial feed.

(11)(10) “Guarantor” means a person whose name and principal mailing address appear on the label and who guarantees the information contained on the label as required by 80-9-202. The person may or may not also be the manufacturer.

(12)(11) “Label” means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(13)(12) “Labeling” means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

(14)(13) “Manufacture” means to grind, mix, blend, or further process a commercial feed.

(15)(14) “Mineral feed” means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(16)(15) (a) “Noncommercial feed” means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(17)(16) "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

(18)(17) "Percent" or "percentage" means percentage by weights.

(19)(18) "Person" means an individual, partnership, corporation, or association.

(20)(19) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(21)(20) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(22)(21) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(23)(22) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

(24)(23) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(25)(24) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(25) "Supplier" means a person who distributes commercial feed into Montana.

(26) "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 2. Section 80-9-201, MCA, is amended to read:

"80-9-201. Licenses and registration. (1) Except as provided in subsection (4)(b), a license is required of a facility or person:

(a) who manufactures commercial feed in this state;

(b) who distributes commercial feed in or into this state; or

(c) whose name appears on the label of a commercial feed as guarantor.

(2) (a) A separate license is required for each facility that manufactures commercial feed within this state or for each facility that distributes commercial feed in or into this state. A facility or person that manufactures, distributes, or is a guarantor for commercial feed must be licensed once annually pursuant to this section.

(b) (i) Except as *otherwise* provided in this subsection (2)(b)(i), all new applicants shall pay a nonrefundable fee of \$100 each calendar year for a license for each facility. The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$100 a year or more than \$110 a year.

(ii) Except as *otherwise* provided in this subsection (2)(b)(ii), license renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of \$75 for each license. The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$75 a year or more than \$85 a year.

(3) Applicants for licensure shall file with the department information on forms provided by the department, including the following:

(a) the applicant's name and place of business;

(b) the mailing address and physical location of the facility to be licensed;

(c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both; and

(d) an indication of whether or not the person applying for licensure is a guarantor.

(4) (a) A license granted under this section remains in force until the end of the calendar year for which it is issued or until canceled by the licensee or by

the department for cause. The department may collect a \$25 late penalty fee for a license renewal application received after January 1 of any year. A license is nontransferable, and license fees are nonrefundable.

(b) A license is not required for a *distributor person* who distributes only pet food or specialty pet food.

(5) A person who manufactures for distribution or who distributes commercial feed in this state shall, upon written request by the department, submit the following information regarding products distributed in this state:

(a) a list of feed products;

(b) all labeling, promotional material, and claims for any feed product;

(c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from AOAC international; and

(d) replicated data performed by a reputable investigator whose work is recognized as acceptable by the department, verifying any claims for effectiveness of a feed product.

(6) (a) A person may not manufacture for distribution or distribute in this state a pet food or specialty pet food that has not been registered under this section by the manufacturer or the guarantor. Except as *otherwise* provided in this subsection (6)(a), the application for registration must be accompanied by a nonrefundable fee of \$50 for each pet food or specialty pet food. The department may by rule adjust the registration fee to maintain adequate funding for the administration of this part. The fee may not be less than \$50 a year or more than \$60 a year.

(b) The registration of pet food and specialty pet food is for a period of 1 year starting January 1 and ending December 31 of each year.

(7) An applicant for registration of a pet food or specialty pet food shall file with the department the following information:

(a) the applicant's name and address; and

(b) a complete standard list of all products being registered.

(8) The department may refuse registration of a pet food or specialty pet food that is not in compliance with this chapter and may cancel any registration subsequently found to not be in compliance with this chapter. A registration may not be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend the application in order to comply with this chapter."

Section 3. Section 80-9-206, MCA, is amended to read:

"80-9-206. Inspection fees – filing of annual statement. (1) An inspection fee must be paid on all commercial feeds, including customer formula feeds, except pet foods and specialty pet foods, distributed in this state as follows:

(a) ~~The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.~~

(a) (i) *For commercial feed distributed into this state, the supplier has primary responsibility for paying inspection fees. However, the manufacturer is responsible for inspection fees if the supplier has not paid them.*

(ii) *For commercial feed distributed in this state, the manufacturer or guarantor are responsible for paying inspection fees.*

(b) Except as *otherwise* provided in this subsection (1)(b), the inspection fee is 18 cents a ton. Inspection fees must be paid on each commercial feed, including customer formula feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant or transferred from one plant to another within the same organization are

exempt. The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.

(c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the feeding operation at the site, but is responsible for ~~any unpaid inspection fees on commercial feed purchased by that person and~~ on any commercial feed that person produces and distributes other than in that person's feeding operations at the site.

(2) ~~Each person who holds a license as required in 80-9-201(1) Each in-state guarantor or manufacturer who distributes commercial feed in this state and each supplier who distributes commercial feed into this state shall:~~

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year and, upon filing the statement, shall pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31 have a penalty fee of 10% or a minimum of \$10, whichever is more, added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a license.

(3) *A pet food or specialty pet food manufacturer, guarantor, or supplier or other person distributing pet food or specialty pet food is exempt from the reporting requirements of subsection (2).*"

Section 4. Section 80-9-302, MCA, is amended to read:

"80-9-302. Enforcement – embargo order – condemnation. (1) When the department has reasonable cause to believe any lot of commercial feed or other feed is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant, manufacturer, ~~distributor licensee~~, or the person holding the commercial feed, shall begin proceedings for condemnation.

(2) Commercial feed not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter."

Approved February 23, 2017

CHAPTER NO. 47

[HB 191]

AN ACT PROVIDING FOR AN INCREASE IN THE BASIC ENTITLEMENT, THE TOTAL PER-ANB ENTITLEMENT, THE TOTAL AMERICAN INDIAN ACHIEVEMENT GAP PAYMENT, THE TOTAL INDIAN EDUCATION FOR ALL PAYMENT, THE TOTAL DATA-FOR-ACHIEVEMENT PAYMENT, AND THE TOTAL QUALITY EDUCATOR PAYMENT; AMENDING SECTION 20-9-306, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-306, MCA, is amended to read:

“20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

- (1) “BASE” means base amount for school equity.
- (2) “BASE aid” means:
 - (a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;
 - (b) the natural resource development K-12 funding payment for a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district, as referenced in subsection (10);
 - (c) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;
 - (d) the total quality educator payment;
 - (e) the total at-risk student payment;
 - (f) the total Indian education for all payment;
 - (g) the total American Indian achievement gap payment; and
 - (h) the total data-for-achievement payment.
- (3) “BASE budget” means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, 100% of the total data-for-achievement payment, and 140% of the special education allowable cost payment.
- (4) “BASE budget levy” means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.
- (5) “BASE funding program” means the state program for the equitable distribution of the state’s share of the cost of Montana’s basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.
- (6) “Basic entitlement” means:
 - (a) for each high school district:
 - (i) \$300,000 for fiscal year 2016 and \$305,370 \$306,897 for fiscal year 2018 and \$312,636 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) ~~§300,000 for fiscal year 2016 and \$305,370~~ *\$306,897 for fiscal year 2018 and \$312,636* for each succeeding fiscal year for school districts with an ANB of more than 800, plus ~~\$15,000 for fiscal year 2016 and \$15,269~~ *\$15,345 for fiscal year 2018 and \$15,632* for each succeeding fiscal year for each additional 80 ANB over 800;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) ~~§50,000 for fiscal year 2016 and \$50,895~~ *\$51,149 for fiscal year 2018 and \$52,105* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) ~~§50,000 for fiscal year 2016 and \$50,895~~ *\$51,149 for fiscal year 2018 and \$52,105* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~\$2,500 for fiscal year 2016 and \$2,545~~ *\$2,558 for fiscal year 2018 and \$2,606* for each succeeding fiscal year for each additional 25 ANB over 250;

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for the district's kindergarten through grade 6 elementary program:

(A) ~~§50,000 for fiscal year 2016 and \$50,895~~ *\$51,149 for fiscal year 2018 and \$52,105* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) ~~§50,000 for fiscal year 2016 and \$50,895~~ *\$51,149 for fiscal year 2018 and \$52,105* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~\$2,500 for fiscal year 2016 and \$2,545~~ *\$2,558 for fiscal year 2018 and \$2,606* for each succeeding fiscal year for each additional 25 ANB over 250; and

(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:

(A) ~~§100,000 for fiscal year 2016 and \$101,790~~ *\$102,299 for fiscal year 2018 and \$104,212* for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

(B) ~~§100,000 for fiscal year 2016 and \$101,790~~ *\$102,299 for fiscal year 2018 and \$104,212* for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus ~~\$5,000 for fiscal year 2016 and \$5,090~~ *\$5,115 for fiscal year 2018 and \$5,211* for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, and the greater of the district's special education allowable cost payment multiplied by:

(a) 175%; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost

payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Natural resource development K-12 funding payment" means the payment of a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district. The total payment to school districts may not exceed the greater of 50% of the fiscal year 2012 oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) or 50% of the oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the school fiscal year in which the payment is provided, plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The amount of the natural resource development K-12 funding payment must be, subject to the limitations of this subsection (10), an amount sufficient to offset any estimated increase in statewide revenue from the general fund BASE budget levy provided for in 20-9-141 that is anticipated to result from increases in the basic or per-ANB entitlements plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The superintendent of public instruction shall incorporate a natural resource development K-12 funding payment calculated in compliance with this subsection (10) in preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112.

(11) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(12) "Total American Indian achievement gap payment" means the payment resulting from multiplying ~~\$205 in fiscal year 2016 and \$209~~ *\$210 for fiscal year 2018 and \$214* for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

(13) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(14) "Total Indian education for all payment" means the payment resulting from multiplying ~~\$20.88 in fiscal year 2016 and \$21.25~~ *\$21.36 for fiscal year 2018 and \$21.76* for each succeeding fiscal year times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(15) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$6,847 for fiscal year 2016 and \$6,970~~ *\$7,005 for fiscal year 2018 and \$7,136* for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~\$5,348 for fiscal year 2016 and \$5,444~~ *\$5,471 for fiscal year 2018 and \$5,573* for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of ~~\$5,348 for fiscal year 2016 and \$5,444~~ *\$5,471 for fiscal year 2018 and \$5,573* for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~\$6,847 for fiscal year 2016 and \$6,970~~ *\$7,005 for fiscal year 2018 and \$7,136* for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(16) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying ~~\$20 for fiscal year 2016 and \$20.36~~ *\$20.46 for fiscal year 2018 and \$20.84* for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.

(17) "Total quality educator payment" means the payment resulting from multiplying ~~\$3,113 in fiscal year 2016 and \$3,169~~ *\$3,185 for fiscal year 2018 and \$3,245* for each succeeding fiscal year by the number of full-time equivalent educators as provided in 20-9-327."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective July 1, 2017.

Section 4. Applicability. [This act] applies to school budgets for school years beginning on or after July 1, 2017.

Approved February 23, 2017

CHAPTER NO. 48

[HB 207]

AN ACT REVISING REPORTING REQUIREMENTS FOR STATEWIDE OFFICE CANDIDATES, STATEWIDE BALLOT ISSUE COMMITTEES, AND STATEWIDE CANDIDATE OR STATEWIDE BALLOT ISSUE POLITICAL COMMITTEES; ELIMINATING THE REQUIREMENT THAT THESE COMMITTEES SUBMIT A DISCLOSURE REPORT NOT MORE THAN 20 DAYS AFTER A PRIMARY ELECTION; AND AMENDING SECTION 13-37-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana, statewide ballot issue committees, and political committees that receive a contribution or make an expenditure supporting or opposing a candidate for statewide office or a statewide ballot issue shall file reports electronically as follows:

(a) quarterly, due on the 5th day following a calendar quarter, beginning with the calendar quarter in which:

(i) funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot; or

(ii) an issue becomes a ballot issue, as defined in 13-1-101(6)(b);

(b) on the 1st day of each month from March through November during a year in which an election is held;

(c) on the 15th day preceding the date on which an election is held;

(d) within 2 business days after receiving a contribution of \$200 or more if received between the 20th day before the election and the day of the election;

(e) not more than 20 days after the date of the *general* election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that receive contributions or make expenditures to support or oppose a particular state district candidate or issue, unless the political committee is already reporting under the provisions of subsection (1), shall file reports as follows:

(a) on the 35th and 12th days preceding the date on which an election is held;

(b) within 2 business days after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for any other public office and political committees that receive contributions or make expenditures to support or oppose a particular local issue shall file the reports specified in subsection (2) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.

(4) Independent and political party committees not required to report under subsection (1) or (2) shall file:

(a) a report on the 90th, 35th, and 12th days preceding the date of an election in which they participate by making an expenditure;

(b) a report within 2 business days of receiving a contribution of \$500 or more if received between the 17th day before the election and the day of the election;

(c) a report within 2 business days of making an expenditure of \$500 or more for an electioneering communication if the expenditure is made between the 17th day before the election and the day of the election;

(d) a report not more than 20 days after the date of the election in which they participate by making an expenditure; and

(e) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(5) An incidental committee not required to report under subsection (1) or (2) shall file a report:

(a) on the 90th, 35th, and 12th days preceding the date of an election in which it participates by making an expenditure;

(b) within 2 business days of receiving a contribution as provided in 13-37-232(1) of \$500 or more if received between the 17th day before an election and the day of the election;

(c) within 2 business days of making an expenditure of \$500 or more for an electioneering communication if the expenditure is made between the 17th day before the election and the day of the election;

(d) not more than 20 days after the date of the election in which it participated; and

(e) on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner shall post on the commissioner's website:

- (a) all reports filed under this section within 7 business days of filing; and
- (b) for each election the calendar dates that correspond with the filing requirements of subsections (1), (2), (4), and (5).

(7) The commissioner may require reports filed under this section to be submitted electronically.

(8) Except as provided in subsections (1)(d), (2)(b), (4)(b), (4)(c), (5)(b), and (5)(c), all reports required by this section must be complete as of the 5th day before the date of filing as specified in 13-37-228(2) and this section.

(9) A political committee may file a closing report prior to the date prescribed by rule or set in 13-37-228(3) and after the complete termination of its contribution and expenditure activity during an election cycle."

Approved February 23, 2017

CHAPTER NO. 49

[HB 237]

AN ACT CREATING A CRISIS INTERVENTION TEAM TRAINING PROGRAM; REQUIRING THE BOARD OF CRIME CONTROL TO DEVELOP AND ADMINISTER THE PROGRAM; ALLOWING THE BOARD TO OFFER GRANT FUNDING AND TO CONTRACT WITH A NONPROFIT ORGANIZATION TO PROVIDE OR COORDINATE TRAINING; AND GRANTING THE BOARD RULEMAKING AUTHORITY TO ADMINISTER THE PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Crisis intervention team training program -- rulemaking.

(1) Within the limits of available funds, the board of crime control shall develop and administer a crisis intervention team training program to increase the number of law enforcement officers, behavioral health providers, and community stakeholders who are trained to respond safely and effectively to incidents that involve an individual who is experiencing a behavioral health crisis.

(2) Local law enforcement agencies, including tribal law enforcement agencies, are eligible to receive grant funding. Grant funds must be used to provide specialized training to help officers:

- (a) recognize and properly respond to individuals with a mental illness or behavioral health problem, including strategies for verbal de-escalation and crisis intervention techniques; and

- (b) best utilize or establish collaborative programs that enhance the ability of law enforcement agencies to coordinate with community-based service providers to address the behavioral health problems of individuals typically encountered by law enforcement officers in the line of duty.

(3) The board may also contract directly with a nonprofit organization to provide or coordinate community-based training programs or to develop best practices and standards.

(4) In administering the crisis intervention team training program, the board shall:

- (a) identify and disseminate data and technical assistance to local law enforcement and to community stakeholders on established best practices or develop statewide best practices for community-based law enforcement responses to individuals experiencing a behavioral health crisis;

(b) identify priorities for funding services, activities, and criteria for the receipt of program funds, including that the training offered should incorporate the best practices identified or developed by the board;

(c) monitor the expenditure of funds by organizations receiving funds under this section;

(d) evaluate the effectiveness of services and activities under this section;

(e) adopt rules as needed to implement this section; and

(f) to the extent practicable, coordinate with existing statewide organizations that identify best practices, develop training models, and collect data to avoid duplication of efforts.

(5) (a) Funds available under subsection (1) consist of state appropriations and federal funds received by the board for the purposes of administering the crisis intervention team training program or any funds received pursuant to subsection (5)(b). The board shall actively seek federal grant money that may be used for the purposes of this section.

(b) The board may accept gifts, grants, and donations from other public or private sources, which must be used within the scope of this section.

(c) The board may utilize up to 10% of funds appropriated for costs incurred to administer the program.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [section 1].

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved February 23, 2017

CHAPTER NO. 50

[HB 241]

AN ACT REVISING REQUIREMENTS FOR UNATTENDED MOTOR VEHICLES; AMENDING SECTION 61-8-357, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-357, MCA, is amended to read:

“61-8-357. Unattended motor vehicles. No A person driving or in charge of a motor vehicle shall *may not* permit it to stand unattended without first stopping the engine and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway safely securing it in such a manner as to prevent the vehicle from rolling onto the roadway.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 23, 2017

CHAPTER NO. 51

[HB 26]

AN ACT ALLOWING THE BOARD OF HOUSING TO SERVICE LOANS OTHER THAN THOSE MADE BY THE BOARD OF HOUSING IF REQUESTED BY A LENDER; AMENDING SECTION 90-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-104, MCA, is amended to read:

“90-6-104. General powers of the board. The board may:

- (1) sue and be sued;
- (2) have a seal;
- (3) adopt all procedural and substantive rules necessary for the administration of this part, including *but not limited to* rules concerning its mortgage, *loan servicing*, construction, and temporary lending programs;
- (4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;
- (5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;
- (6) enter into agreements under its rules with *housing* sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans, or securities, and *or* mortgage purchase programs *or of loans serviced by the board*;
- (7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;
- (8) accept services, appropriations, gifts, grants, bequests, and devises and ~~utilize~~ *use* or dispose of them in carrying out this part;
- (9) ~~consistent with the provisions of this part and any applicable contractual obligations, bid for, purchase, take possession of, hold, operate, manage, lease, sell, assign, transfer, encumber, mortgage, foreclose, release, relinquish, or otherwise acquire, deal with, or dispose of any real or personal property or any right, title, interest, claim, demand, or equity in any real or personal property, including but not limited to loans, notes, mortgages, contracts, instruments, rights of redemption, easements, and other rights under any law, mortgage, contract, or other agreement or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired; including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding as necessary or convenient in carrying out this part; commence~~
- (10) ~~take any action to protect or enforce rights or interests of the board or of the holders of its bonds, notes, or servicing contracts in any of the property described in subsection (9) any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;~~
- (11) ~~service, and contract, and pay or receive payment for the servicing of loans secured by property in Montana;~~
- (12) ~~provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where whenever these services are not otherwise available;~~

(12)(13) provide general consultative services to housing developments for persons and families of lower income and the residents thereof of those housing developments with respect to counseling and training in management, home ownership, and maintenance where whenever these services are not otherwise available;

(13)(14) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds of the board less the cost for investment as prescribed by law must be deposited in the housing authority enterprise fund;

(14)(15) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of the sale;

(15)(16) consent, whenever it considers it the board determines that it is necessary or desirable in fulfilling to fulfill its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders, and noteholders, or other third parties;

(16)(17) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17)(18) procure insurance against any loss in connection with its mortgages, and mortgage loans, and other assets or property, or other programs under this part in amounts and from insurers as the board considers desirable or necessary;

(18)(19) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19)(20) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20)(21) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means.”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates June 30, 2021.

Approved March 1, 2017

CHAPTER NO. 52

[HB 59]

AN ACT LIMITING THE APPOINTMENT OF COUNSEL TO A PUTATIVE FATHER WHERE CHILD IS SUBJECT TO AN ABUSE AND NEGLECT PETITION; AMENDING SECTIONS 41-3-422 AND 41-3-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-422, MCA, is amended to read:

“41-3-422. Abuse and neglect petitions – burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. *If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.*

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties

may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 2. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) ~~and (4)~~ through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or

a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) *Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:*

(a) *the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and*

(b) *the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel.”*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 1, 2017

CHAPTER NO. 53

[HB 79]

AN ACT MODIFYING WHEN AN ORGANIZED MILITIA MEMBER OR INDIVIDUAL LAWFULLY CALLED, ORDERED, OR DRAFTED FOR DUTY IN THE ORGANIZED MILITIA MAY BE TURNED OVER TO CIVIL AUTHORITIES FOR TRIAL; ALLOWING THE ADJUTANT GENERAL OR THE ADJUTANT GENERAL'S DESIGNEE TO ORDER A SUSPECT TO BE TURNED OVER TO CIVIL AUTHORITIES FOR CHARGING AND TRIAL; AND AMENDING SECTION 10-1-408, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-408, MCA, is amended to read:

“10-1-408. Trial by civil authority – when authorized. In a case where the offense ~~charged under investigation~~ is also an offense against civil authority, the ~~convening authority of a court-martial may, upon request of the civil authorities;~~ *adjutant general or the adjutant general's designee may order the ~~person charged~~ suspect to be turned over to the appropriate civil authorities of this state for charging and trial.”*

Approved March 1, 2017

CHAPTER NO. 54

[HB 92]

AN ACT AUTHORIZING THE TRANSPORTATION COMMISSION TO AWARD ALTERNATIVE PROJECT DELIVERY CONTRACTS; LIMITING THE NUMBER OF PROJECTS AUTHORIZED; REQUIRING A REPORT; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 18-2-501, 60-2-111, AND 60-2-112, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limit on projects – reporting requirement. (1) The commission may award alternative project delivery contracts for no more than four projects by December 31, 2024.

(2) A project awarded but not completed by December 31, 2024, is authorized to proceed until final completion of the project.

(3) (a) The department shall provide an annual report to the governor and to the revenue and transportation committee, as provided for in 5-5-227. The

report must contain a benefit analysis of alternative project delivery contracting in comparison to other contracting processes authorized in 60-2-111.

(b) The department shall report to the governor and the revenue and transportation interim committee upon request to provide information about alternative project delivery contracting.

Section 2. Section 18-2-501, MCA, is amended to read:

“18-2-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) (a) “Alternative project delivery contract” means a construction management contract, a general contractor construction management contract, or a design-build contract.

(b) *The term does not include a design-build contract awarded by the transportation commission under 60-2-111(3).*

(2) “Construction management contract” means a contract in which the contractor acts as the public owner’s construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) “Contractor” has the meaning provided in 18-4-123.

(4) “Design-build contract” means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) “General contractor construction management contract” means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) “Governing body” means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11; or

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23.

(7) “Project” means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) “Publish” means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) “State agency” has the meaning provided in 2-2-102, ~~except that the department of transportation, provided for in 2-15-2501, is not considered a state agency.~~

Section 3. Section 60-2-111, MCA, is amended to read:

“60-2-111. Letting of contracts on state and federal-aid highways.

(1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting program authorized in 60-2-137.

(4) *Subject to [section 1], the commission may award alternative project delivery contracts in accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for those contracts.*"

Section 4. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding – reciprocity. (1) Except as provided in subsections (2) through (6), if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing \$50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting program if the provisions of 60-2-137 have been met.

(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects

located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) *Subject to [section 1], the commission may award alternative project delivery contracts in accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for those contracts.*

(7)(8) For the purposes of subsection (6), “construction” has the meaning provided in 18-2-101.”

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 1].

Section 6. Termination. [This act] terminates December 31, 2024.

Approved March 1, 2017

CHAPTER NO. 55

[HB 106]

AN ACT REVISING REGULATIONS BY THE BOARD OF REAL ESTATE APPRAISERS RELATED TO APPRAISAL MANAGEMENT COMPANIES; PROVIDING FOR REGISTRATION AND OVERSIGHT OF APPRAISAL MANAGEMENT COMPANIES AND COLLECTION AND TRANSMISSION OF FEES; REVISING THE DESCRIPTION OF APPRAISAL MANAGEMENT COMPANY OWNERSHIP; ALLOWING DENIAL OR CANCELLATION OF APPRAISAL MANAGEMENT COMPANY REGISTRATION IF ANY OWNER HAS HAD A LICENSE, CERTIFICATE, OR REGISTRATION DENIED OR REVOKED; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 37-54-102, 37-54-105, 37-54-112, 37-54-503, AND 37-54-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004;

37-43-204; 37-50-209; 37-51-501; [section 2]; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)"

Section 2. Registry fees – statutory appropriation. Registry fees collected under 37-54-105(12) are separate from registration fees provided for elsewhere in this part. Registry fees are statutorily appropriated, as provided in 17-7-502, to the department to transmit to the appraisal subcommittee of the federal financial institutions examination council.

Section 3. Section 37-54-102, MCA, is amended to read:

“37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the uniform standards of professional appraisal practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Appraisal” means the practice of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice as developed by the appraisal foundation.

(2) “Appraisal foundation” means the appraisal foundation incorporated as an Illinois a not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) “Appraisal management company” means, in connection with valuation of properties collateralizing mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year.

(4) “Appraisal management services” means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit transaction that is secured by a consumer’s principal dwelling:

(a) administering an appraiser panel;

(b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;

(c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;

(d) contracting with appraisers from the appraiser panel to perform appraisal assignments;

(e) receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;

(f) managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;

(g) tracking and determining the status of orders for appraisal assignments;

(h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and

(i) providing a completed appraisal report performed by an appraiser to one or more clients.

(5) (a) “Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment.

(b) The term does not include a quality control examination.

(6) “Appraiser” means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.

(7) “Appraiser panel” means a network of licensed or certified appraisers who are independent contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly ~~on a periodic basis~~ as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

(8) “Board” means the board of real estate appraisers provided for in 2-15-1758.

(9) “Certified real estate appraiser” means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) “Controlling person” means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or

(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

(11) “Department” means the department of labor and industry provided for in 2-15-1701.

(12) “Licensed real estate appraisal trainee” means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

(13) “Licensed real estate appraiser” means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(14) “Person” means an individual, firm, partnership, association, corporation, or other business entity.

(15) “Quality control examination” means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors.

(16) “Real estate appraiser mentor” means a certified real estate appraiser who meets the qualifications set by the board and is approved by the board to supervise licensed real estate appraisal trainees.”

Section 4. Section 37-54-105, MCA, is amended to read:

“37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of processing:

(a) an application for licensure *or renewal of licensure*; ~~and~~

(b) certification ~~and or~~ renewal of a ~~license or~~ certificate; *and*

(c) *registration or renewal of registration of appraisal management companies*;

(3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(4) prescribe the examinations for licensure or certification and determine the acceptable level of performance on examinations;

(5) receive and review applications for licensure, ~~and~~ certification, or appraisal management company registration and issue or, as appropriate, renew licenses, ~~and~~ certificates, or appraisal management company registrations;

(6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(7) retain all applications and other records submitted to ~~it~~ *the board*;

(8) adopt by rule standards of professional appraisal practice in this state;

(9) (a) *require an appraisal management company to submit reports, information, and documents to the board; and*

(b) *examine the books and records of an appraisal management company operating in the state;*

~~(9)~~(10) reprimand, suspend, revoke, or refuse to renew the license, or certificate, or registration of a person or entity who has violated the standards established for licensed and certified real estate appraisers or registered appraisal management companies;

~~(10)~~(11) regulate and establish minimum requirements and qualifications for real estate appraiser mentors; ~~and~~

(12) *collect and transmit annual registry fees from registered appraisal management companies and federally regulated appraisal management companies in the amount determined by the appraisal subcommittee of the federal financial institutions examination council; and*

~~(11)~~(13) perform other duties necessary to implement this chapter.”

Section 5. Section 37-54-112, MCA, is amended to read:

“37-54-112. Deposit of fees. Fees *Except as provided in 37-54-105(12), fees* collected by the board under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6), and may be used to pay the compensation of board members and other expenses necessary to administer this chapter.”

Section 6. Section 37-54-503, MCA, is amended to read:

“37-54-503. Owner requirements. (1) An appraisal management company applying for registration in this state may not be ~~more than 10%~~ owned by:

(a) a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated; or

(b) another entity that is ~~more than 10%~~ owned by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated.

(2) Each person who owns ~~more than 10%~~ of an appraisal management company in this state:

(a) must be of good moral character, as determined by the board; and

(b) shall submit to a background examination as determined by the board.

(3) Each appraisal management company applying for registration in this state shall certify to the board that ~~it~~ *the appraisal management company* has reviewed each *person or* entity that directly or indirectly owns ~~more than 10%~~ of the appraisal management company, *in whole or in part*, and that no *person or* entity that directly or indirectly owns ~~more than 10%~~ of the appraisal

management company, *in whole or in part*, is ~~more than 10% directly owned by any person who~~ has had a license, or a certificate, or registration to act as an appraiser or appraisal management company refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state.”

Section 7. Section 37-54-511, MCA, is amended to read:

“**37-54-511. Certification – adherence to standards.** Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to perform on an annual basis an appraisal review of the work of all appraisers who are performing appraisals for the appraisal management company ~~on a periodic basis~~ to validate that the appraisals are being conducted in accordance with the uniform standards of professional appraisal practice.”

Section 8. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 54, part 1, and the provisions of Title 37, chapter 54, part 1, apply to [section 2].

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Termination. [Section 2] terminates June 30, 2023.

Approved March 1, 2017

CHAPTER NO. 56

[HB 135]

AN ACT REVISING THE YOUTH COURT ACT TO ALLOW FOR INFORMATION SHARING; REVISING THE RECORDS THAT MUST BE SEALED ON A YOUTH'S 18TH BIRTHDAY; REVISING ACCESS TO AND MAINTENANCE OF ELECTRONIC RECORDS IN MANAGEMENT INFORMATION SYSTEMS; REVISING REQUIREMENTS FOR THE DEPARTMENT OF CORRECTIONS TO TRANSMIT CERTAIN RECORDS TO YOUTH COURT UPON THE YOUTH'S 18TH BIRTHDAY; AMENDING SECTIONS 41-5-216, 41-5-220, AND 41-5-1524, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-216, MCA, is amended to read:

“**41-5-216. Disposition of youth court, law enforcement, and department records – sharing and access to records.** (1) Formal and informal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy

the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal and *informal* youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, ~~including when a youth commits a new offense~~, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation ~~professional and parole~~ staff preparing a presentence report on a youth who has reached the age of majority *an adult with an existing sealed youth court record*.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the ~~department of public health and human services~~ *office of court administrator* and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation ~~as provided in subsection (6)(b)~~.

(b) The department of public health and human services, *the office of court administrator*, and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the ~~department of public health and human services~~ *office of court administrator* or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records ~~may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday are confidential and may be shared only with those persons and agencies listed in 41-5-215(2)~~.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the ~~intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system to a person or agency listed in 41-5-215(2). Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.~~

(9) This section does not prohibit the ~~intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section. A person or agency receiving the youth court record shall destroy the record after it has fulfilled its purpose.~~

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003 *and studies conducted between individuals and agencies listed in 41-5-215(2).*

(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to 50-46-307 or 50-46-308 is currently under youth court supervision."

Section 2. Section 41-5-220, MCA, is amended to read:

"41-5-220. Electronic records -- youth records to be separate -- formal policies and administrative rules required. (1) (a) The department and the youth court are required to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth generated or maintained in any management information system.

(b) The office of the court administrator shall adopt formal policies, and the department shall adopt administrative rules to institute the requirements in subsection (1)(a).

(2) For the purposes of this part, any references to "sealing", "physically sealed", and "destroyed" must be interpreted to have the same meaning when applied to electronic records and must be applied to have the same force and effect. A sealed record must be made unavailable for access by any person unless upon court order as provided in 41-5-216. A destroyed record must be rendered inaccessible and unrecoverable and disposed of in a manner in which confidentiality is protected, which may include disassociating the offense and disposition information from the name of the youth.

~~(3) After October 1, 2005, any management information system that is developed and that contains formal or informal youth court records or department records must be maintained separately from any adult offender management information system in the criminal justice or corrections system."~~

Section 3. Section 41-5-1524, MCA, is amended to read:

“41-5-1524. Commitment to department – transfer of records. (1) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of formal and informal youth court records, including medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(2) The youth court may share informal youth court records with the department when a youth has been committed to the department of corrections for custody. On the youth’s 18th birthday or upon discharge, whichever is earlier, the department shall seal the entire record and is subject to 41-5-216(5).

(3) ~~The department shall maintain the records of a youth committed to the department in a separate management information system and may not include any youth records in an adult offender management information system unless the youth has been adjudicated under 41-5-206.~~ *If the department returns the youth back to youth court supervision on the youth’s 18th birthday as required by the court order, the department shall transmit to the supervising juvenile probation office any medical reports, youth assessment material, education records, and other clinical or behavioral health information pertinent to the care and treatment of the youth.”*

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 1, 2017

CHAPTER NO. 57

[HB 159]

AN ACT DESIGNATING THE SHELBY VETERANS’ MEMORIAL FLAG MONUMENT IN SHELBY, MONTANA, AS A MONTANA VETERANS’ MEMORIAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Shelby veterans’ memorial flag monument. (1) The Shelby veterans’ memorial flag monument in Shelby, Montana, is officially designated as a Montana veterans’ memorial.

(2) The department of commerce and the department of transportation shall identify the Shelby veterans’ memorial flag monument in Shelby, Montana, on official state maps as a Montana veterans’ memorial.

(3) The Shelby veterans’ memorial flag monument in Shelby, Montana, recognizes and honors all veterans, men, women, and canine service members, living or deceased, from all branches of the U.S. armed forces who served in peacetime or in war.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved March 1, 2017

CHAPTER NO. 58

[HB 177]

AN ACT REVISING THE ADMINISTRATION OF IMMUNIZATIONS; ALLOWING ADDITIONAL PNEUMOCOCCAL VACCINES; AMENDING SECTION 37-7-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-105, MCA, is amended to read:

“37-7-105. Administration of immunizations. (1) An immunization-certified pharmacist may prescribe and administer the following immunizations without a collaborative practice agreement in place:

- (a) influenza to individuals who are 12 years of age or older;
- (b) pneumococcal polysaccharide vaccine, and tetanus, and diphtheria to individuals who are 18 years of age or older;
- (c) herpes zoster to those individuals identified in the guidelines published by the United States centers for disease control and prevention’s advisory committee on immunization practices; or
- (d) in the event of an adverse reaction, epinephrine or diphenhydramine to individuals who are 12 years of age or older.

(2) A pharmacist who administers an immunization pursuant to this section shall:

(a) ensure that the individual immunized is assessed for contraindications to immunization;

(b) ensure that the individual who is being immunized or the individual’s legal representative receives a copy of the appropriate vaccine information statement;

(c) report an adverse reaction if the pharmacist is notified of the reaction;

(d) provide a signed certificate of immunization to the primary health care provider of each individual who is immunized and to the individual who is immunized that includes the individual’s name, date of immunization, address of immunization, administering pharmacist, immunization agent, manufacturer, and lot number; and

(e) create a record for each immunization, in which the individual’s name, date, address of immunization, administering pharmacist, immunization agent, manufacturer, and lot number ~~is~~ *are* included, and maintain the record for 7 years from the date the immunization was administered.

(3) For the purposes of this section, the following definitions apply:

(a) “Immunization-certified pharmacist” means a pharmacist who has successfully completed a course of training approved by the United States centers for disease control and prevention, by a provider accredited by the accreditation counsel for pharmacy education, or by an authority approved by the board and who holds a current basic cardiopulmonary resuscitation certification issued by the American heart association, the American red cross, or other recognized provider.

(b) “Vaccine information statement” means an information sheet that is produced by the United States centers for disease control and prevention that explains the benefits and risks associated with a vaccine to a vaccine recipient or the legal representative of the vaccine recipient.”

Section 2. Effective Date. [This act] is effective on passage and approval.

Approved March 1, 2017

CHAPTER NO. 59

[HB 184]

AN ACT REVISING LAWS REGARDING HEALTH CARE PRACTITIONER GUNSHOT OR STAB WOUND REPORTING REQUIREMENTS; ELIMINATING THE REQUIREMENT THAT A PRACTITIONER SUBMIT A WRITTEN REPORT TO LAW ENFORCEMENT WITHIN 24 HOURS AFTER

TREATING OR OBSERVING A WOUND; AMENDING SECTION 37-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-2-302, MCA, is amended to read:

“37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession *who is treating the victim of a gunshot wound or stabbing shall as soon as is practicable* make a report to a law enforcement officer by the fastest possible means. *Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.*”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 1, 2017

CHAPTER NO. 60

[HB 258]

AN ACT REQUIRING A DETENTION CENTER ADMINISTRATOR TO ALLOW AN INMATE TO SPEAK ON THE TELEPHONE WITH THE INMATE'S ATTORNEY WITHOUT CHARGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Inmate phone calls to attorney. As needed and subject to policies adopted by the local government that operates or contracts for the lease or operation of a detention center, the detention center administrator shall allow an inmate to speak on the telephone with the inmate's attorney without charge.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, part 22, and the provisions of Title 7, chapter 32, part 22, apply to [section 1].

Approved March 1, 2017

CHAPTER NO. 61

[HB 278]

AN ACT AUTHORIZING SENTENCING JUDGES TO PLACE OFFENDERS IN RESIDENTIAL TREATMENT; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

“46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(p) participation in a restorative justice program approved by court order and payment of a participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

(q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(r) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

~~(r)~~(s) any combination of the restrictions or conditions listed in ~~subsections (4)(a) through (4)(q)~~ *this subsection (4)*.

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) As used in this section, “dangerous drug” has the meaning provided in 50-32-101.”

Section 2. Applicability. [This act] applies to offenders who are sentenced on or after [the effective date of this act].

Approved March 1, 2017

CHAPTER NO. 62

[HB 300]

AN ACT REVISING EXEMPTIONS FROM SUBDIVISION SANITATION REQUIREMENTS; EXEMPTING CERTAIN TOWNHOUSES FROM CERTAIN SANITATION REGULATIONS; AND AMENDING SECTION 76-4-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-111, MCA, is amended to read:

“76-4-111. Exemption for certain condominiums and townhouses.

(1) Condominiums, *townhomes*, or *townhouses*, as those terms are defined in 70-23-102, constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from *the* provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units ~~for rental or lease~~, the construction of the same or a fewer number of condominium units, *townhomes*, or *townhouses* on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or extension of a public sewage system is required.”

Approved March 1, 2017

CHAPTER NO. 63

[SB 3]

AN ACT GENERALLY REVISING CAMPAIGN EXPENDITURE LAWS RELATING TO CANDIDATE FILING FEES; REVISING THE DEFINITION OF “EXPENDITURE”; SUBJECTING CANDIDATE FILING FEES TO CERTAIN REPORTING REQUIREMENTS; ELIMINATING A REPORTING THRESHOLD EXCEPTION CONCERNING CANDIDATE FILING FEES FOR CERTAIN CANDIDATES AND POLITICAL COMMITTEES; AND AMENDING SECTIONS 13-1-101 AND 13-37-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

“13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Active elector” means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) “Active list” means a list of active electors maintained pursuant to 13-2-220.

(3) “Anything of value” means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) “De minimis act” means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) “Election” means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(13) “Election administrator” means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(14) (a) “Election communication” means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees; or

(v) a communication that the commissioner determines by rule is not an election communication.

(15) (a) “Electioneering communication” means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate’s name, image, likeness, or voice only in the candidate’s capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(v) a communication that the commissioner determines by rule is not an electioneering communication.

(16) "Elector" means an individual qualified to vote under state law.

(17) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(18) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(19) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

(20) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(21) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(22) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (22), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(23) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(24) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

(25) "Individual" means a human being.

(26) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(27) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(28) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(29) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(30) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(31) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(32) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(33) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(34) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(35) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

(36) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(37) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(38) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(39) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

(40) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(41) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(42) "School election" has the meaning provided in 20-1-101.

(43) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(44) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(45) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(46) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(47) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(48) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(49) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(50) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(52) "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

(53) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

Section 2. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana, statewide ballot issue committees, and political committees that receive a contribution or make an expenditure supporting or opposing a candidate for statewide office or a statewide ballot issue shall file reports electronically as follows:

(a) quarterly, due on the 5th day following a calendar quarter, beginning with the calendar quarter in which:

(i) funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot; or

- (ii) an issue becomes a ballot issue, as defined in 13-1-101(6)(b);
- (b) on the 1st day of each month from March through November during a year in which an election is held;
- (c) on the 15th day preceding the date on which an election is held;
- (d) within 2 business days after receiving a contribution of \$200 or more if received between the 20th day before the election and the day of the election;
- (e) not more than 20 days after the date of the election; and
- (f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that receive contributions or make expenditures to support or oppose a particular state district candidate or issue, unless the political committee is already reporting under the provisions of subsection (1), shall file reports as follows:

- (a) on the 35th and 12th days preceding the date on which an election is held;
- (b) within 2 business days after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election;
- (c) not more than 20 days after the date of the election; and
- (d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for any other public office and political committees that receive contributions or make expenditures to support or oppose a particular local issue shall file the reports specified in subsection (2) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, ~~excluding the filing fee paid by the candidate,~~ exceeds \$500, except as provided in 13-37-206.

(4) Independent and political party committees not required to report under subsection (1) or (2) shall file:

- (a) a report on the 90th, 35th, and 12th days preceding the date of an election in which they participate by making an expenditure;
- (b) a report within 2 business days of receiving a contribution of \$500 or more if received between the 17th day before the election and the day of the election;
- (c) a report within 2 business days of making an expenditure of \$500 or more for an electioneering communication if the expenditure is made between the 17th day before the election and the day of the election;
- (d) a report not more than 20 days after the date of the election in which they participate by making an expenditure; and
- (e) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(5) An incidental committee not required to report under subsection (1) or (2) shall file a report:

- (a) on the 90th, 35th, and 12th days preceding the date of an election in which it participates by making an expenditure;
- (b) within 2 business days of receiving a contribution as provided in 13-37-232(1) of \$500 or more if received between the 17th day before an election and the day of the election;
- (c) within 2 business days of making an expenditure of \$500 or more for an electioneering communication if the expenditure is made between the 17th day before the election and the day of the election;

(d) not more than 20 days after the date of the election in which it participated; and

(e) on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner shall post on the commissioner's website:

(a) all reports filed under this section within 7 business days of filing; and

(b) for each election the calendar dates that correspond with the filing requirements of subsections (1), (2), (4), and (5).

(7) The commissioner may require reports filed under this section to be submitted electronically.

(8) Except as provided in subsections (1)(d), (2)(b), (4)(b), (4)(c), (5)(b), and (5)(c), all reports required by this section must be complete as of the 5th day before the date of filing as specified in 13-37-228(2) and this section.

(9) A political committee may file a closing report prior to the date prescribed by rule or set in 13-37-228(3) and after the complete termination of its contribution and expenditure activity during an election cycle."

Approved March 1, 2017

CHAPTER NO. 64

[SB 16]

AN ACT REVISING THE BASIS FOR DETERMINING WHETHER THE DISABILITY AND PENSION FUND OF A CITY'S OR TOWN'S FIRE RELIEF ASSOCIATION IS SOUNDLY FUNDED; AMENDING SECTIONS 19-18-503 AND 19-18-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-18-503, MCA, is amended to read:

"19-18-503. Fund to be soundly funded. (1) Each disability and pension fund must be soundly funded *at fiscal yearend*. The fund is soundly funded if, subject to subsection (2):

(a) assets in the fund are maintained at a level equal to at least 0.21% ~~but no more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111, within the limits of the city or town three times but no more than five times the benefits paid by the fund in the previous or current fiscal year, whichever is greater;~~ or

(b) funding is maintained at a level determined by an actuarial valuation to be sufficient to keep the fund actuarially sound.

(2) An actuarial valuation may be requested only by a city, town, or association. ~~Once an actuarial valuation has been conducted, funding must continue to be based on actuarial determinations rather than on the total assessed value of taxable property pursuant to subsection (1)(a)."~~

Section 2. Section 19-18-504, MCA, is amended to read:

"19-18-504. Special tax levy for fund required. (1) ~~Whenever~~ *The fund shall be reviewed on an annual basis to determine whether the fund is soundly funded pursuant to 19-18-503.*

(2) *Based on the annual review:*

(a) *if the fund contains an amount that is less than the minimum amount required to keep the fund soundly funded pursuant to 19-18-503, the city or town council shall, subject to 15-10-420, levy an annual tax on the taxable value of all taxable property within the city or town;*

~~(2) When (b) if the fund contains an amount that is less than 0.52% but more than 0.21% of the total assessed value of all taxable property within the city or town the maximum but more than the minimum required to keep the fund soundly funded pursuant to 19-18-503(1)(a), the city or town council may, if authorized by the voters as provided in 15-10-425, levy an annual tax.~~

(3) All revenue from the tax must be deposited in the fund.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 1, 2017

CHAPTER NO. 65

[SB 39]

AN ACT ELIMINATING NOTICE TO AND APPROVAL OF COUNTY COMMISSIONERS OF CONSERVATION DISTRICT ORGANIZATION; REPEALING SECTION 76-15-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

76-15-323. Copies of notice transmitted to county commissioners.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 1, 2017

CHAPTER NO. 66

[SB 52]

AN ACT CLARIFYING ADDITIONAL PENALTIES FOR HUNTING WHILE USING PROJECTED ARTIFICIAL LIGHT; AMENDING SECTION 87-6-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-6-401, MCA, is amended to read:

“87-6-401. Unlawful use of equipment while hunting. (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife except for predatory animals, wolves, and those birds not protected by state or federal law;

(c) while hunting, take into a field or forest or have in the person’s possession any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm. This subsection (1)(c) does not prohibit the use of a device or mechanism registered with the bureau of alcohol, tobacco, firearms and explosives to silence, muffle, or minimize the report of a firearm when hunting wildlife.

(d) while hunting, possess any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the

motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

(e) while hunting, use archery equipment that has been prohibited by rule of the commission;

(f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

(g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

(h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in 87-6-901 and ~~87-6-902 through 87-6-903~~.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 1, 2017

CHAPTER NO. 67

[HB 18]

AN ACT REVISING THE PROCESS FOR THE SALE OF A TAX LIEN AND ISSUANCE OF A TAX DEED FOR DELINQUENT TAXES; ELIMINATING THE TAX LIEN SALE; REQUIRING THE COUNTY TO ASSIGN A TAX LIEN TO AN ASSIGNEE WHO PAYS DELINQUENT TAXES; REVISING NOTIFICATION AND NOTICE REQUIREMENTS RELATED TO THE ATTACHMENT OF A TAX LIEN AND ISSUANCE OF A TAX DEED; REQUIRING A DELINQUENT TAXPAYER TO ONLY PAY THE PROPERTY TAXES CURRENTLY DUE BEFORE PAYING DELINQUENT TAXES; ALLOWING AN ASSIGNEE TO PAY SUBSEQUENT YEAR DELINQUENT TAXES ONLY AFTER THE TAXES ARE DELINQUENT; ALLOWING CANCELLATION OF A TAX LIEN ATTACHED OR ASSIGNED IN ERROR; REVISING THE TIME PERIOD FOR WHICH REAL PROPERTY TAXES MUST BE DELINQUENT BEFORE THE COUNTY COMMISSION MAY CONSIDER CANCELLATION; REPEALING COUNTY TREASURER DUTIES RELATED TO COUNTY CONTRACTUAL OBLIGATIONS FOR SEED GRAIN, FEED, OR OTHER RELIEF; AMENDING SECTIONS 15-16-101, 15-16-102, 15-16-701, 15-17-121, 15-17-122, 15-17-123, 15-17-124, 15-17-131, 15-17-212, 15-17-317, 15-17-318, 15-17-320, 15-17-323, 15-17-324, 15-17-325, 15-17-326, 15-18-111, 15-18-112, 15-18-113, 15-18-114, 15-18-211, 15-18-212, 15-18-213, 15-18-214, 15-18-215, 15-18-216, 15-18-217,

15-18-218, 15-18-411, 15-18-412, 15-18-413, 39-3-501, 85-7-2136, 85-7-2152, 85-7-2155, 85-7-2156, 85-7-2157, 85-7-2158, 85-7-2159, 85-7-2162, 85-7-2163, AND 85-8-601, MCA; REPEALING SECTIONS 15-16-305, 15-17-211, 15-17-213, 15-17-214, AND 15-17-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-101, MCA, is amended to read:

“15-16-101. Treasurer to publish notice – manner of publication.

(1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

(iii) itemized city services and special improvement district assessments collected by the county;

(iv) the number of the school district in which the property is located;

(v) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax; and

(vi) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance programs under Title 15, chapter 6, part 3, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341.

(b) ~~If a tax lien is attached to the property is the subject of a tax lien sale for which a tax lien sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that a tax lien is attached to the property is the subject of a tax lien sale, that failure to respond will result in loss of property, and that the taxpayer may contact the county treasurer for complete information.~~

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(a)(iii) ready for mailing.

(4) The notice in every case must be ~~published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places given as provided in 7-1-2121.~~ Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.”

Section 2. Section 15-16-102, MCA, is amended to read:

“15-16-102. Time for payment – penalty for delinquency. Unless suspended or canceled under the provisions of 10-1-606 or Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the property tax assistance program provided for in 15-6-305 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) (a) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full tax years if taxes for both halves of *currently due* for the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(b) A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

(8) The county treasurer may accept a partial payment of centrally assessed property taxes as provided in 76-3-207.”

Section 3. Section 15-16-701, MCA, is amended to read:

“15-16-701. List of delinquent personal property taxes and real property taxes. (1) (a) The county treasurer shall prepare in triplicate and submit to the board of county commissioners of the county, on or before the first Monday in June of each year, a list of personal property taxes that are not

a lien on real estate and that have been delinquent for 5 years or more. The list must show the following:

- (i) the name and address of the delinquent taxpayer;
- (ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and
- (iii) the date the taxes became delinquent.

(b) The list prepared under subsection (1)(a) may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.

(2) (a) At the time the list is prepared as provided in subsection (1)(a), the county treasurer may prepare in triplicate and submit to the board of county commissioners of the county a list of the real property taxes that have been delinquent for 5 years or more. To be included on the list, the *county treasurer must have attached a tax lien for to each property must have been sold at a tax lien sale under as provided in chapter 17, which includes the county as purchaser of the tax lien under 15-17-214*, at least 3 years before preparation of the list. If prepared, the list must show the following:

- (i) the name and address of the delinquent taxpayer;
- (ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any;
- (iii) the real property identification number;
- (iv) the legal description of the property;
- (v) the date the taxes became delinquent; and
- (vi) the date of the last *the county treasurer attached a tax lien sale on to* the property.

(b) The list prepared under subsection (2)(a) may not include real property taxes that remain uncollected because of bankruptcy or litigation.

(3) The board of county commissioners may enter an order that permanently and prospectively cancels real property taxes on parcels identified by the county treasurer or the board as being solely used for road purposes and that otherwise meet the requirements of this section.

~~(4) At the time the list is prepared as provided in subsection (1)(a), the county treasurer shall prepare in triplicate and submit to the board of county commissioners of the county a list of all contractual obligations owed to or held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:~~

- ~~(a) the name and address of the person or persons who entered into the contractual obligation;~~
- ~~(b) the name of the contractual obligation, as "seed loan", "feed loan", or "promissory note", as applicable; and~~
- ~~(c) the date of obligation, the date when the last payment became due, the date of the last payment on the obligation, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1)."~~

Section 4. Section 15-17-121, MCA, is amended to read:

"15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) *"Assignee" means any person, other than the person to whom the property is assessed, who pays the delinquent taxes, including penalties, interest, and costs, and receives a tax lien certificate representing a lien on the property and an assignment certificate.*

(2) ~~“Certificate” or “tax lien sale “Assignment certificate”~~ means the document described in ~~15-17-212 15-17-323~~.

~~(2)(3)~~ (a) “Cost” means the cost incurred by the county as a result of a taxpayer’s failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

- (i) preparing the list of delinquent taxes;
- (ii) preparing the notice of pending *attachment of a tax lien sale*;
- (iii) ~~conducting the tax lien sale~~;
- (iv) assigning the county’s interest in a tax lien to a third party;
- ~~(v)(iv)~~ identifying interested persons entitled to notice of the pending issuance of a tax deed;
- ~~(vi)(v)~~ notifying interested persons;
- ~~(vii)(vi)~~ issuing the tax deed; and
- ~~(viii)(vii)~~ any other administrative task associated with accounting for or collecting delinquent taxes.

(b) The term includes costs that are required by law and incurred by ~~the purchaser of a property tax lien other than the county an assignee~~. The county treasurer may require the ~~purchaser of the property tax lien assignee~~ to provide receipts or may allow the ~~purchaser of the property tax lien assignee~~ to provide a notarized affidavit of costs to the county treasurer upon issuance of a tax lien sale certificate as required in 15-17-212 and notification that a tax deed may be issued as required by 15-18-212 and 15-18-216. A county treasurer may at any time require a ~~purchaser an assignee~~ who provided an affidavit of costs to submit the received costs upon which the affidavit was based.

(c) The term does not include interest for payments for the following:

- (i) postage for certified mailings and certified mailings with return receipt requested;
- (ii) a title search, to the extent necessary to identify interested persons entitled to notice of the pending issuance of a tax deed;
- (iii) publishing costs for required publications; and
- (iv) filing costs for proof of notice.

~~(3)(4)~~ “County” means any county government and includes those classified as consolidated governments.

~~(4)(5)~~ “Property tax lien” or *“tax lien”* means a lien acquired *attached* by the payment at a tax lien sale of all outstanding delinquent taxes *county for nonpayment of property taxes*, including penalties, interest, and costs.

~~(5)~~ “Purchaser” means any person, other than the person to whom the property is assessed, who pays at the tax lien sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) “Tax”, “taxes”, or “property taxes” means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) *“Tax lien certificate” means the document described in 15-17-212.*

~~(7)(8)~~ “Tax lien sale” means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien.”

Section 5. Section 15-17-122, MCA, is amended to read:

“15-17-122. Notice of pending attachment of tax lien sale. (1) The county treasurer shall publish or post a notice of a pending *attachment of a tax lien sale*. The notice must include:

(a) ~~the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale~~ *county will attach a property tax lien to property on which the taxes are delinquent;*

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the ~~time of the tax lien sale specified date,~~ *a tax lien will be offered for sale at the time and place specified in subsection (1)(a) attached and may be assigned to a third party.*

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) ~~The notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 18-7-411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places given as provided in 7-1-2121.~~ The notice must be first published or posted on or before the last Monday in June.

(4) ~~Except as provided in 15-17-211(2), the tax lien sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.~~

~~(5) The sale must be held at the office of the county treasurer.~~

~~(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and tax lien sale. In the event of improper notification, the tax lien sale may be held on all property properly noticed.~~

~~(7)(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.”~~

Section 6. Section 15-17-123, MCA, is amended to read:

“15-17-123. Copy of notice to be filed with county clerk – affidavit.

(1) ~~Immediately following~~ *Following* publication or posting of the notice required in 15-17-122, the county treasurer shall file a copy of the notice with the county clerk. The copy must be accompanied by an affidavit signed by the county treasurer stating:

(a) the name of the newspaper and its address of publication; and

(b) the dates the notice was published.

(2) If no *qualified* newspaper is published in the county *or an adjacent county*, the affidavit must list the locations and date of the posting required by 15-17-122.

(3) The affidavit filed under subsection (1) or (2) is prima facie evidence of all the facts stated therein.”

Section 7. Section 15-17-124, MCA, is amended to read:

“15-17-124. Irregular assessment. If the county treasurer discovers, prior to *attachment of the tax lien sale*, that property on which the taxes are delinquent has been irregularly assessed, the county treasurer may not ~~offer the property or a property attach a tax lien for sale.~~ The taxes on the property

must be listed on the property tax record as uncollected for the year in which they were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected.”

Section 8. Section 15-17-131, MCA, is amended to read:

“15-17-131. Common undivided ownership interest – separate assessment – property tax payments. (1) Except as provided in subsection (2), payment of all property taxes on a parcel by any co-owner is considered payment by all owners, whether or not the property is assessed and taxed separately to co-owners or to a single owner. Any payment by a co-owner in excess of the amount assessed to the co-owner must be the total amount due on the parcel or a partial payment amounting to a year of deficiency, as provided in 15-16-102(5)(a). The nonpayment of taxes by a co-owner who is separately assessed and taxed subjects only the interest of the nonpaying co-owner to *attachment of a tax lien sale*.

(2) (a) A co-owner may receive a tax lien on property in which the co-owner has an undivided interest if:

(i) the co-owner pays the proportional amount of taxes on that co-owner’s interest and on another co-owner’s interest;

(ii) the paying co-owner has notified the nonpaying co-owner of the property tax payments and annually demands reimbursement in writing by certified mail, return receipt requested, addressed to the nonpaying co-owner’s last-known mailing address; and

(iii) the paying co-owner has paid the property taxes for 3 consecutive years without reimbursement.

(b) Upon proof that a co-owner has complied with the provisions of this subsection (2), the paying co-owner is considered the *purchaser assignee* of a tax lien on the ownership interest of the nonpaying co-owner and the county treasurer shall prepare a tax lien ~~sale~~ certificate with the paying co-owner as the *purchaser assignee*. The *tax lien* certificate ~~shall~~ *must* conform to the provisions of 15-17-212, except the certificate need not contain the information required in ~~15-17-212(1)(a) and (1)(b)~~ *15-17-212(2)(a) and (2)(b)*. The treasurer shall comply with the provisions of ~~15-17-212(2)~~ *15-17-212(3)* regarding the *tax lien* certificate.

(c) For the purposes of this subsection (2), if there are more than two co-owners, single and multiple paying co-owners can receive a tax lien on the undivided interests of single and multiple nonpaying co-owners.”

Section 9. Section 15-17-212, MCA, is amended to read:

“15-17-212. Tax Attachment of tax lien sale and preparation of tax lien certificate. (1) ~~After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and upon receipt of all delinquent taxes, penalties, interest, and costs, the~~ (a) *The county treasurer shall attach a tax lien no later than the first working day in August to properties on which the taxes are delinquent and for which proper notification was given as provided in 15-17-122 and subsection (4) of this section. Upon attachment of a tax lien, the county is the possessor of the tax lien unless the tax lien is assigned pursuant to 15-17-323.*

(b) *The county treasurer may not attach a tax lien to a property on which taxes are delinquent but for which proper notice was not given.*

(2) *After attaching a tax lien, the county treasurer shall prepare a tax lien ~~sale~~ certificate that must contain:*

(a) the date on which the property taxes became delinquent;

(b) the date on which a property tax lien was ~~sold at a tax lien sale~~ *attached to the property;*

(c) the name and address of record of the person to whom the taxes were assessed;

(d) a description of the property on which the taxes were assessed;

(e) ~~the name and mailing address of the purchaser;~~

~~(f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;~~

~~(g)~~(f) a statement that the *tax lien* certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;

~~(h)~~(g) a statement specifying the date on which the *purchaser county or an assignee* will be entitled to a tax deed; and

~~(i)~~(h) an identification number corresponding to the tax lien sale certificate number recorded by the county treasurer as required in 15-17-213.

~~(2)~~(3) The *tax lien* certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the *tax lien* certificate must be filed by the treasurer in the office of the county clerk. A copy of the *tax lien* certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax lien sales liens.

~~(3)~~(4) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person *attaching a tax lien to the property, the county treasurer* shall send notice of the proposed payment, by certified mail, pending attachment of a tax lien to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule include the information listed in subsection (2), state that the tax lien may be assigned to a third party, and provide notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance programs under Title 15, chapter 6, part 3, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341. The notice must have been mailed at least 2 weeks prior to the date of the payment but may not be mailed earlier than 60 days prior to the date of the payment. The person making the payment shall provide proof of the mailing on which the county treasurer attaches the tax lien.

(5) *The county treasurer shall file the tax lien certificate with the county clerk and recorder.*"

Section 10. Section 15-17-317, MCA, is amended to read:

"15-17-317. Municipality as purchaser assignee. Whenever property that has been struck off to the county at a tax lien sale under 15-17-214 is subject to the lien of delinquent special assessments and has not been assigned under 15-17-214 or 15-17-323 at the request of the municipality, the county treasurer shall assign all of the rights of the county acquired in the property at the tax lien sale to the municipality upon payment of any delinquent taxes, excluding assessments, and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality, who shall file it. A charge may not be made for the duplicate certificate when the municipality is the purchaser, and the county treasurer shall make an entry "sold to the municipality" on the property tax record opposite the tax. The county treasurer must be credited with the delinquent amount in the settlement.

(1) *At the request of a municipality and if the tax lien has not been assigned pursuant to 15-17-323, the county treasurer shall assign the tax lien on a property with delinquent special assessments to the municipality upon payment of costs and delinquent taxes, excluding delinquent assessments. The municipality is not required to pay penalties or interest.*

(2) *The county treasurer:*

(a) shall deliver to the treasurer of the municipality a copy of the tax lien certificate, which must be filed by the treasurer of the municipality;

(b) may not charge a fee for an assignment certificate when a tax lien is assigned to a municipality; and

(c) shall make an entry "sold to the municipality" on the property tax record and be credited with the delinquent taxes.

(3) Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable."

Section 11. Section 15-17-318, MCA, is amended to read:

"15-17-318. Assignment of municipality's interest. (1) At any time after a parcel of land has been acquired by a municipality, as provided in 15-17-317, and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

(a) the purchase price paid by the municipality;

(b) the delinquent assessments;

(c) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month; and

(d) penalties and costs as provided by law.

(2) The treasurer of the municipality shall execute to the person a *an assignment certificate of sale for the parcel*, which *may must* be in substantially the form provided in ~~15-17-212~~ 15-17-323 for the assignment of the interests of the county. If the *assignment certificate of sale* becomes lost or accidentally destroyed by the assignee, the treasurer of the municipality shall issue a duplicate *assignment* certificate to the assignee after the assignee delivers to the treasurer evidence satisfactory to the treasurer, including an affidavit of the assignee, that the *assignment* certificate has been lost or destroyed.

(3) An assignment by a municipality under this section discharges the trust created under 15-17-317. The municipality may also discharge the trust created under 15-17-317 by paying into the improvement fund the amount of the delinquent assessments and interest accrued on the assessments."

Section 12. Section 15-17-320, MCA, is amended to read:

"15-17-320. Taxes and subsequent installments of special assessments on land acquired by a municipality. For property that is acquired by a municipality as provided in 15-17-317, subsequent installments of the special assessment or assessments, if any, and other special assessments not then delinquent must be levied, and taxes for the following years must be assessed in the same manner as if the property had not been so acquired. If the special assessments or installments thereof or taxes are not paid when due, the property ~~must is~~ again be sold *subject to the attachment of a tax lien* in the manner provided by law and the levies of special assessments, assessments of taxes, and the ~~sale of the property~~ *attachment of a tax lien* for delinquent special assessments and taxes must continue until the time when the property has been redeemed ~~from such sale~~."

Section 13. Section 15-17-323, MCA, is amended to read:

"15-17-323. Assignment of rights -- form. (1) ~~A~~ (a) A tax lien sale certificate or other official record in which the county is listed as the ~~purchaser~~ *possessor of the tax lien* must be assigned by the county treasurer to any person who, after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5), pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(b) *The county treasurer shall develop a policy for assigning a tax lien when more than one person seeks the assignment and provides proof of mail notice to the person to whom the property was assessed. The county treasurer shall seek input from the county clerk and recorder and the county attorney in developing the policy.*

(2) (a) The assignment made under subsection (1) must be in the form of an assignment certificate in ~~substantially~~ the following form:

I,, the treasurer of County, state of Montana, hereby certify that a tax lien sale for tax year 20..., in the county of, (*insert tax lien certificate number*) was held attached on (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in on the following property (*insert property description*) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, *Because delinquent taxes, penalties, interest, and costs remained unpaid on the date of attachment of the tax lien, the county was listed as the purchaser as required by 15-17-214, MCA is the possessor of the tax lien.* As of the date of this assignment certificate, the delinquency, including penalties, interest, and costs amounting to \$, has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

Because there has been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of, state of Montana, acquired in the property by virtue of ~~the attachment of a tax lien sale~~ to (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this day of, 20...

..... County Treasurer

..... County

(b) A copy of an assignment certificate must be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on lien assignments, and property tax lien sales liens, and property tax assistance programs.

(3) An assignment made by a purchaser other than the county, by an assignee of the county; or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. *The county treasurer must file a copy of the statement with the clerk and recorder.* The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax lien sale certificate assignee;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which must contain the same information as contained in the tax lien sale certificate or assignment certificate, as appropriate;

(e) the signature of the party, whether it is the purchaser or the assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement assignment certificate described in subsection (3) is lost or destroyed, the county treasurer

shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate *assignment* certificate to the assignee.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. ~~The form of the notice must be adopted by the department by rule.~~ The notice must have been mailed at least 2 weeks prior to the date of the payment *but not earlier than August 15*. The person making the payment shall provide proof of the mailing.

(6) *The notice must be in the following form:*

NOTICE OF PENDING ASSIGNMENT

(Pursuant to 15-17-212 and 15-17-323, MCA)

THIS NOTICE IS VERY IMPORTANT with regard to the tax lien, which County holds on the following property. If the delinquent taxes are not paid by, an assignment of the tax lien will be purchased. THIS COULD RESULT IN THE LOSS OF YOUR PROPERTY LISTED BELOW.

Please contact the County Treasurer at (406) with questions or to pay the delinquent taxes.

(Required Information):

Owner of record

Mailing address

Legal description

Parcel number

Geocode(s)

Date of notice

.....

Signature of interested assignee

.....

Printed name of interested assignee

(6) ~~The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax lien sale may now have."~~

Section 14. Section 15-17-324, MCA, is amended to read:

~~"15-17-324. Assessment of property sold at with tax lien sale attached.~~ (1) ~~The assessment of property on which the county has attached a tax lien sale certificate has been issued or for which the county is listed as the purchaser, as provided in 15-17-214, the possessor of the tax lien continues in the same manner as other property is assessed.~~

(2) ~~If any assessed taxes are not paid when due, they are delinquent."~~

Section 15. Section 15-17-325, MCA, is amended to read:

~~"15-17-325. Sale not voided by misnomer of ownership.~~ When a tax lien sale certificate is acquired *assignment is taken*, as provided in ~~15-17-212 15-17-323~~, or when the county is listed as the purchaser, as provided in ~~15-17-214~~, the possessor of the tax lien and the taxes were properly assessed on the property of a particular person, no misnomer of ownership or other mistake relating to ownership affects the ~~sale tax lien~~ or renders it void or voidable."

Section 16. Section 15-17-326, MCA, is amended to read:

~~"15-17-326. Voided tax lien sale -- refund -- limitation on action for royalty interest.~~ (1) ~~If a tax lien sale held attached under the provisions of this chapter is declared void by a court for irregularity in the assessment, levy, or sale assignment or if a tax lien is assigned in error, the money paid~~

by the purchaser at the tax lien sale or by any assignee must be refunded, with interest at the rate payable upon delinquencies, as provided in 15-16-102, from the date of the payment, to the purchaser or owner of the tax lien sale certificate assignee, together with any penalty paid by the purchaser assignee.

(2) Following the payment of a refund as provided in subsection (1), the county is considered the purchaser and has a property the possessor of the tax lien upon the property for the legal taxes on the property accruing from the date of delinquency, plus penalties and interest as provided in 15-16-102. Any money refunded that was received, as provided in ~~15-17-212~~ 15-17-323, and distributed by the treasurer to the state or a city, town, or district must be charged to the state, city, town, or district, respectively, by the treasurer and deducted from the next money due the state, city, town, or district on account of taxes paid or collected. A purchaser of a property tax lien or owner of a property tax lien by assignment when sales have been made An assignment made by a city or town that by resolution or ordinance collects its own taxes instead of having the taxes collected by the county treasurer must be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor or, when applicable, the city manager or presiding officer of the city commission. The city or town clerk or city or town treasurer, as appropriate, shall make proper charges and deductions against the respective funds of the city or town upon the next collection of taxes by the city or town.

(3) The purchaser assignee has a lien upon the property for the amount of taxes, penalties, interest, and costs paid, with the interest to be at the rate specified for delinquencies in 15-16-102. If the purchaser assignee is in possession of the property and resides on the property, the purchaser assignee may not be ejected from the property until the purchaser's assignee's lien has been liquidated.

(4) All affirmative defenses at law or equity, including but not limited to estoppel, laches, and adverse possession, may apply in a suit brought to challenge the title to a royalty interest in land claimed to have been acquired by a county by tax deed.

(5) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210."

Section 17. Section 15-18-111, MCA, is amended to read:

"15-18-111. Time for redemption – interested party. (1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax lien sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax lien sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later by the first working day in August, 3 years after attachment of the tax lien.

(2) For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax lien sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 24 months from the date of the first day of the tax lien sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later by the first working day in August, 2 years after attachment of the tax lien.

(3) For the purposes of this chapter, an “interested party” includes a mortgagee, vendor of a contract for deed or the vendor’s successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person who has an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter.”

Section 18. Section 15-18-112, MCA, is amended to read:

“15-18-112. Redemption from property tax lien – lien on interest in property for taxes paid. (1) (a) Except as provided in subsections (1)(b) and (4), in all cases in which a property tax lien has been acquired assigned, the purchaser assignee may pay the subsequent taxes assessed against the property on or after June 1 and prior to July 31 if the taxes have not been paid by the property owner.

(b) If the property qualifies for the property tax assistance program provided for in 15-6-305 and the taxes have not been paid by the property owner, the subsequent taxes may be paid after the time period provided for in 15-16-102(4)(b) and prior to July 31.

(2) Upon the redemption of the property from the property tax lien, the redemptioner shall pay, in addition to the amount for which of the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes assessed, with interest and penalty at the rate established for delinquent taxes in 15-16-102.

(3) An owner of less than all of the interest or a lienholder with an interest in real property who redeems a property tax lien on the property has a lien for the taxes paid on the interests of the property that are not owned by the redemptioner.

(4) The property tax lien may also be redeemed for a particular tax year by a partial payment of that tax year, as provided in 15-16-102(5), if:

(a) the property tax lien for the year in which the partial payment is made is owned by the county; and

(b) the tax deed has not been issued pursuant to 15-18-211.”

Section 19. Section 15-18-113, MCA, is amended to read:

“15-18-113. Treasurer to record file redemptions. (1) Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or the person’s agent to the county treasurer and refunded to the person listed as purchaser, as provided in 15-17-212(1)(e), 15-17-213, or 15-17-214, or distributed, as provided in 15-18-114, the word “redeemed”, the date, and the name of the redemptioner must be marked by the county treasurer on the tax lien sale certificate or in the record required in 15-17-214. Upon redemption, the The county treasurer shall execute a certificate of redemption to be filed or recorded with the county clerk and recorder upon:

(a) payment to the county treasurer of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or the person’s agent; and

(b) distribution of the redemption proceeds pursuant to 15-18-114.

(2) The form of the certificate of redemption may must be made as follows:

CERTIFICATE OF REDEMPTION

I,, the treasurer of County, certify the following:

1. For tax years (years), the taxes were delinquent on the following real property: (description of the property).

2. The tax lien on the was attached to the property was sold on.....(date of attachment of the tax lien sale). Tax Lien Sale Certificate No. or and Tax Lien Assignment Certificate No. (if applicable).

3. The tax lien was redeemed on (date of redemption) by the payment of:

- Taxes.....
- Penalty.....
- Interest.....
- Cost.....
- Total.....
- Receipt Number.....

4. The redemption was made by (name of redemptioner).

Date:

.....
Signature”

Section 20. Section 15-18-114, MCA, is amended to read:

“15-18-114. Distribution of redemption proceeds. (1) When a ~~property tax lien for which the county is listed as purchaser in possession of a tax lien that~~ is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a ~~property tax lien for which the recorded purchaser is other than the county an assignee is in possession of a tax lien that~~ is redeemed, the county treasurer shall distribute to the person listed as the ~~purchaser assignee on the tax lien sale assignment certificate provided for in 15-17-323,~~ and in the record kept by the county treasurer the amount the ~~purchaser assignee~~ paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the ~~purchaser other than the county assignee~~ must be distributed pursuant to subsection (1).

(b) (i) ~~The distribution must be made by certified mail, return receipt requested, by the county treasurer to the purchaser assignee at the address listed on the tax lien sale assignment certificate as provided in 15-17-212(1)(e) within 30 days of redemption.~~

(ii) If the money distributed to the ~~purchaser assignee~~ is returned unopened to the county treasurer, the treasurer shall ~~publish once a week for 2 consecutive weeks in the official newspaper of the county a give notice as provided in 7-1-2121~~ stating that:

(A) the county treasurer is in possession of money belonging to the ~~purchaser assignee~~ for the redemption of the delinquency on the property named in the tax lien ~~sale~~ certificate;

(B) the money must be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the ~~purchaser assignee~~ within the 1-year period, the ~~purchaser assignee~~ relinquishes all claim to the money and the money must be credited to the county general fund.

(3) ~~The publication notice~~ required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of ~~publication notice is given.~~

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed.”

Section 21. Section 15-18-211, MCA, is amended to read:

“15-18-211. Tax deed – fee. (1) Except as provided in subsection (3), if the property tax lien is not redeemed in the time allowed under 15-18-111, the

county treasurer shall grant the ~~purchaser assignee~~ a tax deed for the property. The deed must contain the same information as is required in a tax lien sale certificate under 15-17-212 *and an assignment certificate under 15-17-323*, except the description of the property must be the full legal description, ~~and a statement that the property tax lien was not redeemed during the redemption period provided in 15-18-111.~~

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the ~~purchaser assignee~~ \$25 *for making the deed* plus all actual costs incurred by the county in giving the notice or assisting ~~another purchaser or an assignee~~ in giving the notice required in 15-18-212 ~~for making the deed, which.~~ The fee must be deposited in the county general fund.

(b) If the ~~purchaser is tax deed is issued~~ to the county, no fee may be charged for making the deed.

(c) Reasonable costs incurred by the county in searching the county records to identify persons entitled to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

(3) If the ~~purchaser is the county and~~ no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs the county treasurer to issue a tax deed.

(4) Deeds issued to ~~purchasers assignees or the county~~ must be recorded by the county clerk as provided in Title 7, chapter 4, part 26, except that when the county is the ~~purchaser and subsequent~~ *issued the tax deed holder*, the county clerk may not charge a fee for recording the deed.”

Section 22. Section 15-18-212, MCA, is amended to read:

“15-18-212. Notice – proof of notice – penalty for failure to notify.

(1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111 *Between May 1 and May 30 of the year in which the redemption period expires*, a notice must be given as follows:

(a) for each property for which ~~there has been issued to the county a tax lien sale certificate or for which the county is otherwise listed as the purchaser or assignee~~ *the county attached a tax lien and has not assigned the tax lien*, the county clerk and recorder *treasurer* shall notify the parties as required in subsection (4) ~~and the current occupant of the property, if any;~~ that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which ~~there has been issued a tax lien sale certificate to a purchaser other than the county or for which an assignment has been made~~ *the county attached a tax lien and assigned the tax lien pursuant to 15-17-323*, the ~~purchaser or assignee, as appropriate;~~ shall notify the parties as required in subsection (4); ~~if any;~~ that a tax deed will be issued to the ~~purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.~~

(2) (a) Except as provided in subsection (2)(b), if the county ~~is the purchaser is the possessor of the tax lien~~, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county ~~clerk and recorder~~ *treasurer* shall provide notification to the parties as required in subsection (4) ~~and the current occupant, if any;~~ in the manner provided in subsection (1)(a). The notification required under this subsection must be

made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

~~(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk and recorder as required in subsection (8), the~~ *The* county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b) *between January 1 and January 31 of the year in which the redemption period expires.* The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax lien sale assignment certificate provided for in ~~15-17-212~~ or on the assignment form provided for in 15-17-323.

~~(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or the assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk and recorder as required in subsection (8)~~ (7), the county treasurer shall cancel the property tax lien evidenced by the tax lien sale certificate or *and* the assignment certificate. Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

(4) (a) The notice required under subsections (1) and (2) must be *in the form required by 15-18-215 and* be made by certified mail, return receipt requested, to the current occupant, if any, of the property and to each party, other than a utility, listed on a property title guarantee, provided that:

(i) the guarantee has been approved by the insurance commissioner and issued by a licensed title insurance producer; and

(ii) the guarantee was ordered on the property by the person required to give notice.

(b) The address to which the notice must be sent is, for each party, the address disclosed by the records in the office of the county clerk and recorder or in the title guarantee and, for the occupant, the street address or other known address of the subject property.

~~(5) In all cases in which the address of an interested party is not known,~~ *The* person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the party for whom the address is unknown;

(b) a statement that the address of the party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the party's rights in the property may be in jeopardy.

~~(6) The notices required by subsections (1), (2), and (5) must contain the following:~~

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax lien sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax lien sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed, *give notice as provided in 7-1-2121 and in the form required by 15-18-215.*

(7)(6) The amount of interest and costs provided for in subsection (6)(e) continues to accrue until the date of redemption. The total amount of interest and costs that must be paid for redemption must be calculated by the county treasurer as of the date of payment.

(8)(7) Proof of notice in whatever manner *must be given as provided in 15-18-216 and* must be filed with the county clerk and recorder. ~~If the purchaser or An assignee is other than the county, the~~ *must file* proof of notice ~~must be filed with the county clerk and recorder within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county is the~~ *possessor of the tax lien*, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(9)(8) A county or any officer of a county may not be held liable for any error of notification.”

Section 23. Section 15-18-213, MCA, is amended to read:

“15-18-213. Form of tax deed – prima facie evidence. (1) The form of a tax deed issued under the provisions of this chapter, executed by a county treasurer, must be made ~~in substance~~ as follows:

This deed is made by (name of county treasurer), county treasurer of the county of (name of county), in the state of Montana, to (name of purchaser assignee, the purchaser’s assignee’s agent, or assignee county that is the possessor of the tax lien), as provided by the laws of the state of Montana:

Whereas, there was assessed for (year) the following real property (description of the property); and

Whereas, the taxes for (year) levied against the property amounted to \$; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes *was attached by* (name of county) and was ~~sold assigned to~~ *(if applicable, name of purchaser or the purchaser’s agent or assignee)* on (date, including year) for the sum of \$, which amount included delinquent taxes in the amount of \$, penalties in the amount of \$,

interest in the amount of \$, and other costs in the amount of \$; and

Whereas, a tax lien ~~sale~~ certificate was issued and filed ~~or the sale otherwise recorded~~ as required by law; and

Whereas, notice was given to required parties in accordance with 15-18-212 that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been redeemed by (name of former owner) or any other person entitled to redeem it.

Now, therefore, I, (treasurer's name), county treasurer of the county of, in the state of Montana, in consideration of the sum of \$ paid, hereby grant to (name of ~~purchaser assignee~~ or the ~~purchaser's assignee's~~ agent or ~~assignee~~ *county that is the possessor of the tax lien*) all the property situated in County, state of Montana, described in this document.

Witness my hand on this date (date, including year).

.....County Treasurer

.....County

(2) A tax deed executed in ~~substantially~~ the form provided in subsection (1) is prima facie evidence that:

(a) the property was assessed as required by law;

(b) the taxes were levied in accordance with law;

(c) the taxes were not paid when due;

(d) notice of *the pending attachment of a tax lien sale* was given and a ~~property tax lien was sold~~ *the tax lien was attached* at the proper time and place as provided by law;

(e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;

(f) the person who executed the deed was legally authorized to do so; and

(g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax."

Section 24. Section 15-18-214, MCA, is amended to read:

"15-18-214. Effect of deed. (1) *A Subject to 15-18-411 and 15-18-413, a deed issued under this chapter conveys to the grantee absolute title to the property described in the deed as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:*

(a) when the claim is payable after the execution of the deed and:

(i) *a subsequent property tax lien attaches* ~~subsequent to the tax lien sale is attached~~; or

(ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;

(b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or

(c) when the land is owned by the United States, this state, or a subdivision of this state.

(2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued."

Section 25. Section 15-18-215, MCA, is amended to read:

"15-18-215. Form of notice that tax deed may issue. Section 15-18-212 requires that notice be given to all persons considered interested parties and to the current occupant of property that may be lost to a tax deed. The notice *may must* be made as follows:

NOTICE THAT A TAX DEED MAY BE ISSUED

IF YOU DO NOT RESPOND TO THIS NOTICE, YOU WILL LOSE YOUR PROPERTY.

TO:.....
(Name) (Address, when unknown, so state)

Pursuant to section 15-18-212, Montana Code Annotated, NOTICE IS HEREBY GIVEN:

1. As a result of a property tax delinquency, a property tax lien exists on the following described real property in which you may have an interest:

.....
.....

2. The property taxes became delinquent on

3. The property tax lien was attached as the result of a tax lien sale held on

4. The property tax lien was purchased at a tax lien sale on by
(Name) (Address):

5. The lien was subsequently assigned to (if applicable).

65. As of the date of this notice, the amount of tax due is:

- TAXES:.....
- PENALTY:.....
- INTEREST:.....
- COST:.....
- TOTAL:.....

76. For the property tax lien to be liquidated, the total amount listed in paragraph 65 must be paid by, which is the date that the redemption period expires or expired.

87. If all taxes, penalties, interest, and costs are not paid to the county treasurer COUNTY TREASURER on or prior to, which is the date the redemption period expires, or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser assignee or county that is the possessor of the tax lien on the day following the date that the redemption period expires or on the date the county treasurer will otherwise issue a tax deed.

98. The business address and telephone number of the county treasurer who is responsible for issuing the tax deed is: County Treasurer, (Address), (Telephone).

FURTHER NOTICE FOR THOSE PERSONS LISTED ABOVE WHOSE ADDRESSES ARE UNKNOWN:

- 1. The address of the interested party is unknown.
 - 2. The published notice meets the legal requirements for notice of a pending tax deed issuance.
 - 3. The interested party's rights in the property may be in jeopardy.
- DATED at this (Date).

.....
Signature

IF YOU DO NOT RESPOND TO THIS NOTICE, YOU WILL LOSE YOUR PROPERTY."

Section 26. Section 15-18-216, MCA, is amended to read:
"15-18-216. Form of proof of notice. Section 15-18-212 requires that proof of notice must be filed with the county clerk. The proof of notice may must be made as follows:

PROOF OF NOTICE

I, (Name and Address), acting as or on behalf of the owner of the property tax lien, have complied with the notice requirements of Title 15, chapter 18, MCA, as follows:

1. A “~~Notice of Issuance of that a Tax Deed May Be Issued~~” was mailed to the owners, current occupant, and parties, as required by 15-18-212, MCA. A copy of each notice is attached or is on file in the office of the county clerk.

2. The notices were mailed by certified mail, return receipt requested. Copies of the return receipts are attached or are on file in the office of the county clerk.

3. Notice was given to ~~parties with unknown addresses~~ by publishing in the ~~official newspaper of the county as required by 7-1-2121~~, which is, on and *or posting in the three public places designated by the governing body, which are,, and* . Proof of publication is attached.

~~DATED:~~
.....

.....
(Signature)

SUBSCRIBED AND SWORN TO before me this (Date):

.....

Notary Public for the State of Montana

Residing in

My Commission Expires

State of

County of

The record was signed before me on (date) by (name(s) of individual(s))

.....

.....

(Signature of notarial officer)

(Official stamp)

.....

Title of officer (if not shown in stamp)”

Section 27. Section 15-18-217, MCA, is amended to read:

“15-18-217. Form of cancellation. The notice of cancellation of an assignment required by 15-18-212 of a tax lien as evidenced by a tax lien sale certificate or assignment may *must* be made as follows:

I,, the treasurer of County, certify that (name of the purchaser or the purchaser’s agent or assignee or assignee’s agent) of (address), purchased a tax lien *assignment* (tax lien sale certificate no. or tax lien assignment certificate no.) on property owned by (name of owner of record). See legal description attached as exhibit “A”, Tax Receipt No. on (date).

I further certify that pursuant to 15-18-212(3)(a), notice was given to (name of purchaser or the purchaser’s agent or assignee or assignee’s agent) of the notification obligation and that the tax lien will be canceled if the purchaser assignee does not comply with provisions of 15-18-212 within 120 days from (date of mailing of certified letter).

I further certify that the treasurer of County has no record of notice by the owner of the tax lien in accordance with 15-18-212(8)(7).

Therefore, noncompliance by the assignee has caused the tax lien to be canceled this (date).

.....

Name of County Treasurer”

Section 28. Section 15-18-218, MCA, is amended to read:

“15-18-218. Charge not allowed for filings or recordings made by county treasurer. The county clerk and recorder may not impose a charge for tax lien assignments, tax lien sale certificates, *assignment certificates*,

certificates of redemption, or any other form that the county treasurer is required to file or record with the county clerk and recorder.”

Section 29. Section 15-18-411, MCA, is amended to read:

“15-18-411. Action to quiet title to tax deed – notice. (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a ~~purchaser~~ *an assignee* to real property claimed to have been acquired through tax proceedings or a tax lien ~~sale assignment~~, the ~~purchaser assignee~~, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

- (i) own the property;
- (ii) have any interest in or lien upon the property;
- (iii) have a right to redeem the property; or
- (iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is referred to as the true owner.

(c) Except as provided in subsection (1)(d), the order described in subsection (1)(a) may command the true owner to:

- (i) deposit with the court for the use of the ~~purchaser~~ *assignee*:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the ~~purchaser~~ *assignee* following the order and after 3 years from the date of the *attachment of the tax lien sale* to preserve the property or to make improvements on the property while in the ~~purchaser’s~~ *assignee’s* possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why the payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether the owner is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and whose name and address are reasonably ascertainable.

- (b) Jurisdiction is acquired over all other persons by:

- (i) ~~publishing the order once in the official newspaper of the county;~~

- (ii) ~~posting the order in three public places in the county at least 10 days prior to the hearing; and~~

- (iii) giving a copy of the order to the county treasurer.”

Section 30. Section 15-18-412, MCA, is amended to read:

“15-18-412. Procedure in tax deed quiet title action. (1) Upon the hearing of the order to show cause, the court has jurisdiction to determine the amount to be deposited and to make an order that the same be paid to the court within a period not exceeding 30 days after the order is made.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), if the amount is not paid within the time fixed by the court, the true owner is considered to have waived any defects in the tax proceedings and any right of redemption. In the event of waiver, the true owner has no claim of any kind against the state or ~~purchaser~~, *a county that is the possessor of the tax lien, or an assignee*, and a

decree must be entered in the action quieting the title of the ~~purchaser county~~ or the assignee as against the true owner.

(b) The proceedings are void if the taxes were not delinquent or have been paid.

(c) A deposit is not required if the true owner is found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(3) If payment is made to the court and the true owner is successful in the action and the tax proceedings are declared void, the amount deposited with the court must be paid to the ~~purchaser county that is the possessor of the tax lien or the assignee.~~

(4) If the purported true owner is not successful in the action and the title of the ~~purchaser county that is the possessor of the tax lien or the assignee~~ is sustained, the money must be returned to the purported true owner.

(5) In any action brought by a ~~purchaser county that is the possessor of the tax lien or the assignee~~ to quiet title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set forth in one complaint. All persons claiming any title to, interest in, or lien upon any of the premises or any part of the premises may be joined as defendants, even though their claims are independent, are not in common, and do not cover the same tracts. The procedure in the action must follow, as nearly as practicable, the procedure specified in 70-28-101 through 70-28-109.

(6) In the final judgment, the court shall also determine the rights resulting from any additional taxes on the property accruing or being paid by either party during the pendency of the suit.

(7) In the quiet title action, the court has complete jurisdiction to fix the amount of taxes that should have been paid, including penalties, interest, and costs, and to determine all questions necessary in granting full relief, including the power to order the department or any tax officer to make and certify to the court a corrected or new assessment or to do any other act necessary to enable the court to do complete justice. Errors may be reviewed on appeal from the final judgment.”

Section 31. Section 15-18-413, MCA, is amended to read:

“15-18-413. Title conveyed by deed – defects. (1) All deeds executed more than 3 years after the applicable *attachment of the tax lien* ~~sale~~ convey to the grantee absolute title to the property described in the deed as of 3 years following the date of ~~sale of the property interest at attachment of the tax lien sale.~~

(2) The conveyance includes:

(a) all right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to the property; and

(b) the right, if the tax deed, tax lien ~~sale attachment~~, or any of the tax proceedings upon which the deed may be based are attacked and held irregular or void, to recover the unpaid taxes, interest, penalties, and costs that would accrue if the tax proceedings had been regular and it was desired to redeem the property.

(3) The tax deed is free of all encumbrances except as provided in 15-18-214(1)(a) ~~through (1)(c).~~

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in 15-18-111.

(5) (a) Subject to subsection (5)(b), if any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the ~~sale of the property interest at the applicable tax lien sale attachment of the tax lien,~~ the grantee may publish in the official newspaper of the county, once a week

~~for 2 consecutive weeks,~~ a give notice entitled "Notice of Claim of a Tax Title" as provided in 7-1-2121. The notice must:

- (i) describe all property claimed to have been acquired by a tax deed;
- (ii) contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;
- (iii) contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;
- (iv) list the name and address of record of the person in whose name the property was assessed or taxed; and
- (v) contain a statement that demand is made that the true owner shall, within 30 days after the later of service or the first publication of the notice, pay to the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer to redeem the property or the true owner may bring a suit to quiet the true owner's title or to set aside the tax deed.

(b) The notice described in subsection (5)(a) must be served on a taxpayer whose name and address are reasonably ascertainable.

(6) (a) Provided that the statutory requirements for a notice of intended issuance of a tax deed required by 15-18-212 have been complied with and if within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption are considered waived. Except as provided in subsection (6)(b), after the 30-day period, the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, or omissions in any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes, whether or not the irregularities, defects, or omissions could void the proceedings.

(b) The proceedings in subsection (6)(a) are void if the taxes were not delinquent or have been paid."

Section 32. Section 39-3-501, MCA, is amended to read:

"39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except persons, firms, partnerships, or corporations that have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax lien sale certificate is not considered an encumbrance."

Section 33. Section 85-7-2136, MCA, is amended to read:

"85-7-2136. Collection of taxes or assessment. (1) On or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county subject to taxation or assessment under 85-7-2104 for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and a tax lien sale certificate is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax lien sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid.”

Section 34. Section 85-7-2152, MCA, is amended to read:

“85-7-2152. Proceeds of sale. (1) Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of the district is sold by the treasurer of the county where the land is situated in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which the lands are sold, the county treasurer making the sale or sales shall place to the credit of the proper funds of the irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty on the proceeds as provided for by the general laws relating to delinquent taxes for state and county purposes.

(2) ~~When any of the lands are struck off at the tax lien sale to the county where they are situated pursuant to the provisions of 15-17-214 the county assigns a tax lien as provided in 15-17-323, the county treasurer of the county shall, upon the issuance of the tax lien sale assignment certificate to the county assignee, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises that were sold for which a tax lien was assigned, inclusive of the interest and penalty. The certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands and premises that were struck off to for which the county at the tax lien sale assigned the tax lien. After the issuance of the certificate, the sum named in the certificate and the taxes and assessments of the district evidenced by the certificate bear interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for~~

the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described in the certificate in the manner provided for by law. Duplicates of certificates issued to the irrigation district must be filed in the office of the county clerk and county treasurer of the county with the tax lien sale certificate of the lands and premises.”

Section 35. Section 85-7-2155, MCA, is amended to read:

“85-7-2155. Sale by county commissioners when land not redeemed.

When the lands and premises ~~so sold for taxes~~ *with attached tax liens* and upon and against which the certificates have been issued for the taxes and assessments of the irrigation district are not redeemed within the time provided for by 15-18-111, the board of county commissioners of the county, within 3 months thereafter, shall cause these lands and premises to be sold as provided for by law, and out of the proceeds of the sale, the county treasurer of the county shall pay to the holder or holders of the certificates the sum for which the same were issued, with interest as provided for to the date of the sale of the lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this chapter have been issued may, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of the irrigation district represented by the certificate, inclusive of the interest thereon, in addition to the state and county taxes, if any, against the same.”

Section 36. Section 85-7-2156, MCA, is amended to read:

“85-7-2156. Proceedings where land struck off to county and in which county is possessor of tax lien and lien is not redeemed. ~~In case~~ *If the county is the possessor of a tax lien on property so assessed for irrigation district purposes is struck off to the county, as provided for by law, and debenture certificates of have been issued for the taxes and assessments of said the irrigation district issued thereon, as hereinbefore provided for in 85-7-2152, and the said lands and premises be not tax lien has not been redeemed before the next annual assessment for irrigation purposes shall become becomes delinquent thereon, then and in that event, like, debenture certificates for each year’s irrigation district taxes and assessments shall must be issued against said land the property and shall must be included in and satisfied by any redemption thereof, with interest as hereinbefore provided for in 85-7-2152, and shall in like manner must be paid from the proceeds of sale of said the lands by the board of county commissioners, if the same be not redeemed as provided for by law.”*

Section 37. Section 85-7-2157, MCA, is amended to read:

“85-7-2157. Purchase of lands by district – revolving fund, credits, and expenditures. (1) ~~At all sales of all lands for delinquent taxes when all~~ *When a tax lien is attached to property for which a portion of the delinquent taxes are taxes and assessments levied and assessed by an irrigation district against the lands to be sold, the commissioners of the irrigation district, if there is no other bidder for the land at the tax lien sale, may bid on the land take an assignment of the tax lien for the total amount of all delinquent taxes and assessments, penalty, and interest against the land. If the commissioners are the only bidder, the* The county treasurer shall strike off the lands *assign the tax lien to the irrigation district and issue tax lien sale certificates an assignment certificate to the irrigation district the same as tax lien sale assignment certificates are issued to other purchasers assignees.* For the purpose of paying the taxes, assessments, interest, and penalties, the commissioners of the irrigation district may create by resolution a revolving fund for the purchase of tax lien sale certificates and titles *liens*. The commissioners may provide

funds for the revolving fund by levy, bond issue, or otherwise. The district may pay the taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against the revolving fund if there is sufficient money in the fund.

(2) When taxes are paid by the district as provided in this part, the county treasurer shall distribute that portion of the tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment. However, if the board of commissioners of the irrigation district file with the county treasurer a certified copy of the resolution passed by the commissioners requesting nondistribution by the county treasurer of the portion of the tax belonging to the district, the county treasurer may not distribute that portion of the tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment, but the total amount due the irrigation district must be credited by the treasurer to the revolving fund. If money is credited to the revolving fund, at the time of the ~~sale~~ *assignment* by the district of the tax lien ~~sale certificate~~ or of the *sale* of property obtained through the certificate, the funds that are realized from the sale must be deposited with the county treasurer, together with the rentals received from the property, and the treasurer shall credit the proceeds of the redemption sale or rental pro rata to the several funds of the district in accordance with the original levy or assessment.

(3) At the time of redemption or of the *sale assignment* by the district of the tax lien ~~sale certificate~~ or *sale* of the property obtained through the certificate, the funds that are realized must be deposited with the county treasurer, together with rentals received from the property. The county treasurer shall credit the proceeds of the redemption, sale, or rentals to the revolving fund to the extent required to reimburse the revolving fund in full. If the sum realized permits, any excess must be credited to the several funds of the district in accordance with the original levy and assessment. Expenditures may not be made from the revolving fund except as provided in this section. The board of irrigation district commissioners may, by resolution, when the fund becomes inactive, transfer the balance to a sinking fund to pay any indebtedness that had been incurred by the district by reason of the creation of the revolving fund.”

Section 38. Section 85-7-2158, MCA, is amended to read:

“85-7-2158. Purchase of lands by district – tax lien ~~sale certificates assignments and payment.~~ (1) Any irrigation district may:

(a) ~~purchase the tax lien sale certificate issued to any county for lands sold at a tax lien sale against which any of its taxes and assessments are delinquent take an assignment of a tax lien; or~~

(b) if a deed has issued to the county, purchase the lands from the county by paying all state, county, city, school district, and other delinquent taxes, together with penalty, interest, and costs of publication and sale to the county treasurer of the county making the sale.

(2) The payment must be made by the commissioners of the district by issuing and delivering to the county treasurer a warrant drawn against the revolving fund of the district if there is sufficient money in the fund to pay the warrant in full upon demand. The county treasurer shall then assign the tax lien ~~sale certificate~~ to the irrigation district, or the commissioners of the county shall convey the lands to the district if the tax deed was issued to the county.”

Section 39. Section 85-7-2159, MCA, is amended to read:

“85-7-2159. Issuance of tax deed. If there has been no redemption of ~~lands sold at a tax lien sale to an irrigation district or by any other person or no redemption of lands struck off to the county for which a tax lien sale~~

~~certificate tax liens has been assigned to an irrigation district or any other person as provided by law for the redemption of lands from tax lien sales and notice has been given as required in 15-18-212, the county treasurer of the county within which the lands are situated shall issue a tax deed for the lands to the irrigation district or any other holder of a tax lien sale an assignment certificate.~~

Section 40. Section 85-7-2162, MCA, is amended to read:

“85-7-2162. Powers of district commissioners to acquire and manage tax lien sale lands. (1) In addition to the powers of irrigation districts, the commissioners of every irrigation district established and organized under and by virtue of the laws of the state may:

(a) purchase lands within their respective districts that had been sold and conveyed to the county for nonpayment of taxes and assessments, ~~purchase tax lien sale certificates of the land when struck off to the county~~ *take assignments of tax liens*, and take title to the land for their district;

(b) own, manage, operate, lease, sell, and dispose of the land for the use and benefit of their respective districts;

(c) sue and be sued in reference to the lands in the name of their respective irrigation districts and commence, maintain, and prosecute suits to quiet title to the lands and any other suits in equity or actions at law with reference to the lands, the same as any other individual or corporate owners of the lands; and

(d) do any other acts or things necessary or beneficial for their respective districts in connection with the lands.

(2) The lands must be offered for sale at public sale, and the commissioners may reject any bids on the land if, in their judgment, the bids are insufficient. The lands may not be sold at private sale at a price less than the highest bid made at the public sale at which the lands were offered for sale. If a bid is not received for the land when the land is offered at public sale, the commissioners may then sell the land in the manner, at the price, and upon the terms that they choose.

(3) The board of commissioners of any irrigation district may do what is necessary to carry out the provisions and intentions of 85-7-2157 through 85-7-2164.”

Section 41. Section 85-7-2163, MCA, is amended to read:

“85-7-2163. Granting of tax deed. The holder of the ~~tax lien sale assignment~~ certificate must be granted a tax deed by the county treasurer in the manner and form provided by Title 15, chapter 18.”

Section 42. Section 85-8-601, MCA, is amended to read:

“85-8-601. Certification and collection of district taxes. (1) Subject to 15-10-420 and on or before the third Monday in August of each year, the commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When a county is the possessor of a tax lien for any real estate on account of which

the district taxes and assessments have been levied ~~has been sold to the county and the tax lien sale certificate is held by the county~~, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax lien ~~sale~~, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. However, the county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time the real estate taxes are paid or paid at the time the drainage district taxes are paid.”

Section 43. Repealer. The following sections of the Montana Code Annotated are repealed:

- 15-16-305. Disposition of delinquent list.
- 15-17-211. Conduct of tax lien sale.
- 15-17-213. Treasurer to record tax lien sales.
- 15-17-214. County as purchaser -- assignment.
- 15-17-321. Resale for nonpayment.

Section 44. Directions to code commissioner. The code commissioner is instructed to renumber 15-17-212 into a new section in Title 15, chapter 17, part 1.

Section 45. Effective date. [This act] is effective on passage and approval.

Section 46. Applicability. (1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act].

(2) [Sections 2, 18, and 20] apply retroactively, within the meaning of 1-2-109, to any tax lien begun or issued prior to [the effective date of this act].

Approved March 2, 2017

CHAPTER NO. 68

[HB 41]

AN ACT INCREASING THE ALLOWABLE DIMENSIONS OF CERTAIN AUTOMOBILE TRANSPORTERS TO CONFORM WITH FEDERAL LAW; PROVIDING DEFINITIONS; AMENDING SECTION 61-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

“61-10-104. Length – definitions. (1) A single truck, bus, or self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 55 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length or 61 feet in combined trailer length, excluding

those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) (i) ~~A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.~~

(ii) A stinger-steered automobile transporter may not exceed 80 feet in length plus a maximum 4 feet of front overhang and 6 feet of rear overhang, except as provided by 61-10-124.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), and this combination may not have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturer's rated capacity" may not tow more than one trailer or semitrailer, and this combination may not have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck tractor and one pole trailer or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (5)(a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(2), does not apply to the vehicle combination described in this subsection (5)(a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Axle" means a transverse beam that is the common axis of rotation of one or more wheels and that, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

(b) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(c) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(d) “Length”, except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(e) “Rocky Mountain double” means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer.

(f) “Steering axle” means an axle that pivots at the hub to allow the wheel to follow the travel of the vehicle. A steering axle is capable of being steered but need not always be connected to a steering wheel.

(g) “*Stinger-steered automobile transporter*” means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles.

(h) “*Stinger-steered boat transporter*” means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of assembled boats or boat hulls.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 2, 2017

CHAPTER NO. 69

[HB 48]

AN ACT CLARIFYING THE DEFINITION OF “CHANGE IN APPROPRIATION RIGHT” FOR PURPOSES OF THE WATER USE ACT; PROVIDING THAT A CHANGE IN APPROPRIATION RIGHT DOES NOT INCLUDE A CHANGE IN THE METHOD OF IRRIGATION; AND AMENDING SECTION 85-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

“85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) *The term does not include a change in water use related to the method of irrigation.*

(7) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

(18) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(19) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(20) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(21) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(22) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(23) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(24) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(25) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(26) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(27) "Water division" means a drainage basin as defined in 3-7-102.

(28) "Water judge" means a judge as provided for in Title 3, chapter 7.

(29) "Water master" means a master as provided for in Title 3, chapter 7.

(30) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(31) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.”

Approved March 2, 2017

CHAPTER NO. 70

[HB 49]

AN ACT REVISING DISCLOSURE LAWS RELATED TO WATER RIGHTS; CLARIFYING THE PROCESS FOR DISCLOSING TRANSFERS OF WATER RIGHTS; AND AMENDING SECTION 85-2-424, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-424, MCA, is amended to read:

“85-2-424. Filing. (1) Except in the case of a transfer of real property served by a public service water supply, when a person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate must contain a water rights disclosure in which the transferor shall acknowledge, at or before closing or transfer of real property, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

(2) (a) If the realty transfer certificate discloses that the water rights will transfer with the property, the department’s records must be updated to reflect the purchaser of the property as the new owner of the water right based on: ~~information received from the department of revenue.~~

(i) *information received from the department of revenue; or*

(ii) *an ownership update form provided by the department and submitted to the department with a copy of the deed.*

(b) The appropriate fee must be paid at closing or upon completion of the transfer of real property as provided in 85-2-426.

~~(b)(c)~~ (c) The transferee of a water right, after receiving notice provided in subsection ~~(2)(e)~~ (2)(d), is responsible for compliance with this section.

~~(e)(d)~~ (d) If the department receives notice from the department of revenue that a property transfer has occurred and the proper fee was not received by the department, the department shall send a notice to the transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department may assess a penalty against the transferee pursuant to 85-2-431.

(3) If the realty transfer certificate discloses the division of a water right among parcels, the person dividing the water right shall complete and file with the department a water right ownership update form, a map, and the required fee.

(4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department, on a form provided by the department, information describing the exempting of the water right and the appropriate fee.

(5) If a person severs a water right from appurtenant property without selling the property, the person shall file with the department, on a form provided by the department, information describing the severance and the appropriate fee.

(6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water right is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument unless there is submitted with the deed or instrument a certification under penalty of false

swearing, on a form provided by the department and signed by the transferor and transferee, that states either:

(a) that the documents and fee necessary to comply with this section are held in escrow, in which case the certification must also be signed by the escrow agent; or

(b) if there is no escrow, that the transferor and transferee certify that they have prepared the required documents and will send the required documents and fee to the department within 60 business days of recording, in which case the certification must also require the transferee to acknowledge that failure to file the appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-431 against the transferee.

(7)(7) Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:

“WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee *and* ~~and~~ rejection of the deed for recording.”

Approved March 2, 2017

CHAPTER NO. 71

[HB 53]

AN ACT CLARIFYING THE PROCEDURE FOR CALCULATING LEVIES FOR CONSERVATION DISTRICTS; AMENDING SECTION 76-15-527, MCA; REPEALING SECTION 76-15-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-15-527, MCA, is amended to read:

“**76-15-527. Purpose of expenditures.** All money collected under 76-15-511 through 76-15-516, 76-15-518 through 76-15-526, 76-15-531, and 76-15-532 must be expended for the purposes provided in Title 76, chapter 15.”

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

76-15-517. Computation of rate of assessment.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 2, 2017

CHAPTER NO. 72

[HB 112]

AN ACT REVISING DISPUTE REVIEW PROCEDURES FOR COLLECTION OF DELINQUENT TAXES TO BE CONSISTENT WITH OTHER DISPUTE REVIEW PROCEDURES IN TITLE 15; PROVIDING FOR NEW INFORMAL PROCEDURES FOR COLLECTIONS OF DELINQUENT TAXES; PROVIDING ADDITIONAL TIME FOR REVIEW; PROVIDING RULEMAKING

AUTHORITY; AMENDING SECTION 15-30-2629, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2629, MCA, is amended to read:

“15-30-2629. Authority to collect tax – offset – hearing. (1) The department shall collect taxes that are delinquent as determined under this chapter.

(2) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

(5) The department must provide the taxpayer with notice of the ~~right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department intent to file a claim on behalf of a taxpayer uniform dispute review available under 15-1-211 for disputing the offset of funds for collection of delinquent taxes.~~ A request for hearing must be made within 30 days of the date of the notice ~~and such hearing, if requested, must be held within 20 days.”~~

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 2, 2017

CHAPTER NO. 73

[SB 85]

AN ACT SUBMITTING A 6-MILL LEVY FOR CONTINUED SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE ELECTORATE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax levy for university system. There is levied upon the taxable value of all real estate and personal property subject to taxation in the state of Montana 6 mills for the continued support, maintenance, and improvement of the Montana university system. The funds raised from the levy must be deposited in the state special revenue fund.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to [section 1].

Section 3. Effective date. If approved by the electorate, [this act] is effective January 1, 2019.

Section 4. Termination. [Section 1] terminates December 31, 2028.

Section 5. Submission to electorate. This act shall be submitted to the qualified electors of Montana at the general election to be held in November 2018 by printing on the ballot the full title of this act and the following:

FOR continuing to levy 6 mills for the support of the Montana university system.

AGAINST continuing to levy 6 mills for the support of the Montana university system.

CHAPTER NO. 74

[HB 232]

AN ACT REVISING THE DEFINITION OF COMMUNITY COLLEGE DISTRICT FOR THE PURPOSE OF CLARIFYING THAT COMMUNITY COLLEGES MAY OFFER DUAL ENROLLMENT COURSES TO HIGH SCHOOL STUDENTS; AMENDING SECTION 20-15-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-15-101, MCA, is amended to read:

“20-15-101. Definition. As used in this title, unless the context clearly indicates otherwise, the term “community college district” means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction to ~~high school graduates and other persons who have terminated their formal high school education~~, *open to all people, subject to uniform regulations as determined by the trustees.* Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 13, 2017

CHAPTER NO. 75

[SB 50]

AN ACT ALLOWING ELECTRONIC VALIDATION OF ELECTRONIC HUNTING LICENSES OR TAGS FOR GAME ANIMALS AND WILD TURKEYS; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 87-6-411 AND 87-6-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Electronic validation of hunting licenses and tags -- rulemaking. (1) A hunter may electronically validate any hunting license or tag issued electronically pursuant to this chapter for a game animal or wild turkey.

(2) Electronic validation of licenses pursuant to this section may not include the collection of hunter location data through the use of a global positioning system.

(3) The department may adopt rules to implement this section. The department may adopt rules regarding the possession of a game animal or wild turkey for which a license or tag was electronically validated.

Section 2. Section 87-6-411, MCA, is amended to read:

“87-6-411. Tagging of game animal offenses. (1) Each license issued by the department authorizing the holder of the license to hunt game animals, whether issued to a resident or a nonresident, must provide any tags the department prescribes.

(2) When a person kills a game animal under the license, the person shall, *before the carcass is removed from or the person leaves the site of the kill*, take physical possession of the game animal by:

(a) *electronically validating the license or tag pursuant to rules adopted in accordance with [section 1]; or*

(b) cutting out from the license or tag the date the animal was killed and attaching the license or tag to the animal ~~before the carcass is removed from or the person leaves the site of the kill.~~ The A license or tag *that is not electronically validated* must be:

(a)(i) completely filled out with the name of the license holder, the license holder's address, and any other information requested on the license or tag; and

(b)(ii) kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed.

(3) When a game animal has been lawfully killed and the proper license or tag *is electronically validated* or is attached to the game animal that was killed, the game animal becomes the property of the person who lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

(4) A person may not fail to keep the license or tag attached to the game animal or portion of the game animal while the animal is possessed by the person *unless the license or tag was electronically validated*.

(5) A person may not tag a game animal with or *electronically validate* a license or tag *that is* restricted to a hunting district other than the hunting district where the game animal was killed.

(6) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court."

Section 3. Section 87-6-412, MCA, is amended to read:

"87-6-412. Tagging of turkey offenses. (1) A person who kills, captures, or possesses a wild turkey by authority of any turkey tag or permit may not:

(a) fail or neglect to attach the tag to the turkey in compliance with instructions on the tag *or electronically validate the tag in accordance with rules adopted pursuant to [section 1]* prior to the person leaving or the turkey being removed from the site of the kill;

(b) fail to validate the tag *either electronically or* by not filling out or punch marking the tag as required; or

(c) *unless the tag was electronically validated*, fail to keep the tag attached while the turkey is possessed by the person.

(2) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 15, 2017

CHAPTER NO. 76

[HB 286]

AN ACT ALLOWING THE LIVESTOCK LOSS BOARD TO MINIMIZE LIVESTOCK LOSSES FROM MOUNTAIN LION PREDATION AND TO REIMBURSE LIVESTOCK PRODUCERS FOR LIVESTOCK LOSSES FROM MOUNTAIN LION PREDATION; AND AMENDING SECTIONS 2-15-3110, 2-15-3111, 2-15-3112, 2-15-3113, 81-1-110, AND 87-1-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3110, MCA, is amended to read:

“2-15-3110. (Temporary) Livestock loss board – purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf conservation and management plan, *the Montana mountain lion management plan*, and the Montana grizzly bear management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves, *mountain lions*, and grizzly bears to livestock producers and to reimburse livestock producers for livestock losses from wolf, *mountain lion*, and grizzly bear predation.

(2) The board consists of five members, appointed by the governor, as follows:

(a) three members who are actively involved in the livestock industry and who have knowledge and experience with regard to wildlife impacts or management; and

(b) two members of the general public who are or have been actively involved in wildlife conservation or wildlife management and who have knowledge and experience with regard to livestock production or management.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(4) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(5) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-113.

(6) *The board shall prioritize grants for prevention of wolf and grizzly bear predation over those for mountain lion predation.* (Terminates June 30, 2021--sec. 8, Ch. 349, L. 2015.)

2-15-3110. (Effective July 1, 2021) Livestock loss board – purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf conservation and management plan, *the Montana mountain lion management plan*, and the Montana grizzly bear management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves, *mountain lions*, and grizzly bears to livestock producers and to reimburse livestock producers for livestock losses from wolf, *mountain lion*, and grizzly bear predation.

(2) The board consists of five members, appointed by the governor, as follows:

(a) three members who are actively involved in the livestock industry and who have knowledge and experience with regard to wildlife impacts or management; and

(b) two members of the general public who are or have been actively involved in wildlife conservation or wildlife management and who have knowledge and experience with regard to livestock production or management.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(4) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(5) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112.

(6) *The board shall prioritize grants for prevention of wolf and grizzly bear predation over those for mountain lion predation.*

Section 2. Section 2-15-3111, MCA, is amended to read:

“2-15-3111. Livestock loss reduction program. The livestock loss board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf, *mountain lion*, and grizzly bear predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf, *mountain lion*, and grizzly bear predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant.”

Section 3. Section 2-15-3112, MCA, is amended to read:

“2-15-3112. Livestock loss mitigation program – definitions. The livestock loss board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, *mountain lions*, and grizzly bears, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves, *mountain lions*, and grizzly bears to cattle, swine, horses, mules, sheep, goats, llamas, and livestock guard animals on

state, federal, and private land and on tribal land that is eligible through agreement pursuant to 2-15-3113(2).

(2) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves, *mountain lions*, or grizzly bears may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, *mountain lion*, or grizzly bear, including but not limited to the presence of bite marks indicative of the spacing of tooth punctures of wolves, *mountain lions*, or grizzly bears and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf, *mountain lion*, or grizzly bear predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price,

then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredate species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredate species may have been in the area when the depredation occurred."

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss board. (1) The livestock loss board shall:

- (a) process claims;
- (b) seek information necessary to ensure that claim documentation is complete;
- (c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;
- (d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;
- (e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;
- (f) prepare the annual budget for the board; and
- (g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf, *mountain lion*, or grizzly bear management plan for reservation lands that is consistent with the state wolf, *mountain lion*, or grizzly bear management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

- (a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves, *mountain lions*, and grizzly bears;
- (b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves, *mountain lions*, and grizzly bears;
- (c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;
- (d) adjudicate appeals of claims;
- (e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;
- (f) meet as necessary to conduct business; and
- (g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish and wildlife

commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any **wolf** carcasses or parts of **wolf** carcasses *from wolves or mountain lions* received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110 and used for the purposes of 2-15-3111 through 2-15-3114.”

Section 5. Section 81-1-110, MCA, is amended to read:

“81-1-110. Livestock loss reduction and mitigation accounts. (1)

There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those transferred to the account provided for in 81-1-112 [or 81-1-113] or appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf, *mountain lion*, or grizzly bear depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113. (Bracketed language in subsection (2)(a) terminates June 30, 2021--sec. 8, Ch. 349, L. 2015.)”

Section 6. Section 87-1-217, MCA, is amended to read:

“87-1-217. Policy for management of large predators – legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

(a) protect humans, livestock, and pets;

(b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and

(c) preserve citizens’ opportunities to hunt large game species.

(2) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(3) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock if the state objective for breeding pairs has been met. For the purposes of this subsection, “problem wolves” means any individual wolf or pack of wolves with a history of livestock predation.

(4) The department shall work with the livestock loss board and the United States department of agriculture wildlife services to establish the conditions under which **wolf** carcasses or parts of **wolf** carcasses *from wolves or mountain lions* are retrieved during **wolf** management activities and when those carcasses or parts of carcasses are made available to the livestock loss board for sale or auction pursuant to 2-15-3113.

(5) The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators

have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species.

(6) As used in this section:

(a) “consultation” means to actively provide information to a county or tribal government regarding proposed policy decisions on matters that may have a harmful effect on agricultural production or livestock operations or that may pose a risk to human health or safety in that county or on those tribal lands and to seek information and advice from counties or tribal governments on these matters;

(b) “large game species” means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(c) “large predators” means bears, mountain lions, and wolves.”

Approved March 20, 2017

CHAPTER NO. 77

[HB 304]

AN ACT PROVIDING FOR A STATUTORY APPROPRIATION TO THE DEPARTMENT OF REVENUE FOR THE PURCHASE OF CIGARETTE TAX STAMPS; AMENDING SECTIONS 10-2-417, 16-11-119, 17-7-502, AND 53-6-1201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-417, MCA, is amended to read:

“10-2-417. Use of funds generated by taxation on cigarettes. (1) Revenue generated by 16-11-119 and allocated to the department of public health and human services for veterans’ homes must be used to support the operation and maintenance of the Montana veterans’ homes programs.

(2) The legislature shall appropriate from the account established in 16-11-119~~(1)(a)~~(2)(a) the funds required for the operation and maintenance of the Montana veterans’ homes.”

Section 2. Section 16-11-119, MCA, is amended to read:

“16-11-119. Disposition of taxes – statutory appropriation. (1) *A sum equal to the amount necessary to purchase cigarette tax stamps must be deposited to or allocated from the state special revenue fund to the credit of the department from cigarette taxes collected under the provisions of 16-11-111, as provided in subsection (5).*

(2) *After the deposit or allocation in subsection (1), cigarette Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:*

(a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans’ nursing homes;

(b) ~~for fiscal years beginning July 1, 2011, and ending June 30, 2015, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans’ home in southwestern Montana;~~

(c) ~~(b)~~ 2.6% in the long-range building program account provided for in 17-7-205;

(d) ~~(c)~~ 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(e) ~~(d)~~ the remainder to the state general fund.

(2)(3) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3)(4) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201.

(5) *Each fiscal year, a sum equal to the amount of money necessary to purchase cigarette tax stamps is statutorily appropriated, as provided in 17-7-502, from the state special revenue fund allocation in subsection (1) to the department for tax administration responsibilities.*

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; *16-11-119*; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of

19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)”

Section 4. Section 53-6-1201, MCA, is amended to read:

“53-6-1201. Special revenue fund – health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119~~(1)(d)~~(2)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119~~(3)(b)~~(4)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the

biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(b) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 5. Effective date. [This act] is effective July 1, 2017.

Approved March 20, 2017

CHAPTER NO. 78

[HB 305]

AN ACT REVISING LAWS RELATED TO COUNTY BOUNTIES ON PREDATORS; ALLOWING COUNTIES TO ESTABLISH THE DOLLAR AMOUNT OF BOUNTIES; REVISING FUNDING SOURCES FOR BOUNTIES; REVISING THE TERM OF THE COUNTY LIVESTOCK FEE; REVISING APPOINTMENT OF BOUNTY INSPECTORS; AMENDING SECTIONS 81-7-201, 81-7-204, 81-7-303, AND 81-7-603, MCA; AND REPEALING SECTION 81-7-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-201, MCA, is amended to read:

“81-7-201. County fee for bounties on predatory animals – definition. (1) Whenever the owners or agents of the owners of not less than 51% of the livestock of any county in this state present a petition to the board of county commissioners asking for the imposition of a fee upon the livestock of the county for the purpose of paying bounties on predatory animals killed in the county, the board of county commissioners shall impose the fee on all livestock in the county. *The fee must remain in effect until a subsequent petition is submitted to modify or eliminate the fee.*

(2) *The board of county commissioners shall determine the dollar amount of the bounty to be paid on each predatory animal.*

(3) *The board of county commissioners may appoint bounty inspectors in addition to those provided for in 81-7-112.*

(4) (a) *Except as provided in subsection (4)(b), for the purposes of this part, “predatory animal” has the meaning provided in 81-7-101.*

(b) *The term does not include species managed or protected subject to Title 87.”*

Section 2. Section 81-7-204, MCA, is amended to read:

“81-7-204. Presentation of skins – affidavit. A person claiming bounty on a predatory animal under this part shall present the green skin or pelt of the animal, with all four feet attached, to one of the bounty inspectors provided for in ~~81-7-202~~ 81-7-112 or 81-7-201 and shall make an affidavit that the animal

was killed within the county where the bounty is claimed. The affidavit must be corroborated by at least two reputable stockowners of the county to the effect that they know or have good cause to believe that the animal was killed within that county. For the purpose of this part, each bounty inspector ~~provided for in this part~~ is empowered to administer oaths. The bounty inspector shall endorse upon the affidavit the inspector's approval or disapproval of the claim and shall cut from the skin or pelt the four feet. The person applying for the bounty shall then present the affidavit, with the endorsements, to the county auditor or, in counties not having an auditor, to the county clerk, who shall attach the affidavit to a claim against the county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county."

Section 3. Section 81-7-303, MCA, is amended to read:

"81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of a county may require all owners or persons in possession of a sheep 1 year of age or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of a sheep 1 year of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control, *only including bounties paid pursuant to Title 81, chapter 7, part 2.* Interest earned on money in the fund must be deposited in the fund.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part."

Section 4. Section 81-7-603, MCA, is amended to read:

"81-7-603. County commissioners permitted to require per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of cattle 9 months of age or older in the county on the regular assessment date of each year, as provided in 15-24-903, to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee on the assessment record of the county by the department of revenue. The license fee is payable to and must be collected by the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom

the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners ~~only for the predatory animal control, program~~ *including bounties paid pursuant to Title 81, chapter 7, part 2.* Interest earned on money in the fund must be deposited in the fund.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part.”

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

81-7-202. Signers of petition -- time for presenting -- limitation on bounties -- bounty inspectors.

Approved March 20, 2017

CHAPTER NO. 79

[HB 377]

AN ACT REQUIRING THE BOARD OF MILK CONTROL TO ADOPT RULES RELATED TO THE CALCULATION OF MILK LICENSE FEES; AND AMENDING SECTION 81-23-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-202, MCA, is amended to read:

“81-23-202. Licenses – disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department as provided in 81-22-202 or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the board. The annual fee for the license is \$2, is due before July 1, and must be deposited by the department in the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the board shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The board shall adopt rules fixing the amount of ~~each fee~~ *the fees under this section, including rules identifying the milk hundredweight equivalent conversion factor used for calculating the amount of the fees levied on manufactured dairy products.* The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer

or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee per hundredweight on the volume of all classes of milk produced and sold by a person licensed by the department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The fee must be established pursuant to 81-1-102(2).

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid before the 25th day of each month. The amount of the assessments must be computed by applying the fee designated by the board and the fee established in subsection (4) to the volume of milk sold in the preceding month.

(6) Failure of a producer-distributor, producer, or distributor to pay an assessment when due is a violation of this chapter, and the board may revoke a license upon due cause and after a hearing. A licensee shall pay all assessments accrued through the date a license is revoked under this section. A revoked license must be reinstated by the board upon payment of all accrued assessments and a delinquency fee established by rule.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The board may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

Approved March 20, 2017

CHAPTER NO. 80

[HB 81]

AN ACT REVISING LAWS RELATED TO THE DISTRIBUTION AND PUBLICATION OF THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER; REQUIRING THAT THE SECRETARY OF STATE PUBLISH THESE PUBLICATIONS IN AN ELECTRONIC FORMAT AVAILABLE ON THE SECRETARY OF STATE'S WEBSITE; ELIMINATING THE REQUIREMENTS THAT CERTAIN ENTITIES ARE PROVIDED WITH COPIES OF THESE PUBLICATIONS WITHOUT CHARGE AND THAT CERTAIN ENTITIES MAINTAIN COPIES OF THESE PUBLICATIONS; AMENDING SECTIONS 2-4-311, 2-4-312, AND 2-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-311, MCA, is amended to read:

"2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish in the

~~appropriate format~~ all rules filed pursuant to this chapter in the ARM. The secretary of state shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers necessary. The secretary of state may include editorial notes, cross-references, and other matter that the secretary of state considers desirable or advantageous. The secretary of state shall publish supplements to the ARM at the times and in the form that the secretary of state considers appropriate.

(2) *The secretary of state shall publish the ARM, including supplements or revisions to the ARM, in a printable electronic format and make the electronic version of the ARM freely available through the secretary of state's website.*

(2)(3) The ARM must be arranged, indexed, and published or duplicated in a manner that permits separate publication of portions relating to individual agencies. An agency may make arrangements with the secretary of state for the printing or electronic distribution of as many copies of the separate publications as it may require. The secretary of state may charge a fee for any separate printed or electronic publications. The fee must be set and deposited in accordance with 2-15-405 and must be paid by the agency.”

Section 2. Section 2-4-312, MCA, is amended to read:

“2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) ~~The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send~~ *publish* the register to any other person who pays a subscription fee, which must be established and deposited in accordance with 2-15-405. ~~The register must be sent in electronic format unless a hard copy is requested in a printable electronic format and make each issue of the register freely available through the secretary of state's website. The secretary of state shall maintain a permanent archive of the register.~~

(3) The register must contain three sections, including a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the statements required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM.”

Section 3. Section 2-4-313, MCA, is amended to read:

“2-4-313. Distribution, costs, maintenance, and fees Fees. (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following in an electronic format unless a hard copy is requested:

(a) attorney general, one copy;

(b) ~~clerk of United States district court for the district of Montana, one copy;~~

(c) clerk of United States court of appeals for the ninth circuit, one copy;

~~(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;~~

~~(e) state law library, one copy;~~

~~(f) state historical society, one copy;~~

~~(g) each unit of the Montana university system, one copy;~~

~~(h) law library of the university of Montana-Missoula, one copy;~~

~~(i) legislative services division, two copies;~~

~~(j) library of congress, one copy;~~

~~(k) state library, one copy.~~

~~(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers. An entity required by this section to maintain a copy or set of the ARM and supplements or revisions to it and a copy of the register complies with this section if it provides access to an electronic version of the current ARM and the current year's issues of the register or the current year's issue and register archives for the prescribed period of time.~~

~~(3)(1) The secretary of state shall may make printed or electronic copies, of and subscriptions, to the ARM and supplements, or revisions to the ARM and or the register available to any person for a fee set in accordance with subsection (6) (4). Fees are not refundable.~~

~~(4)(2) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.~~

~~(5)(3) In addition to the fees authorized by 2-4-311 and 2-4-312 and other fees authorized by this section, the secretary of state may charge fees for internet or other computer-based services requested by state agencies, groups, or individuals.~~

~~(6)(4) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405."~~

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2017

CHAPTER NO. 81

[SB 4]

AN ACT ELIMINATING CERTAIN ADVISORY COUNCILS AND REPORTS THAT ARE REQUIRED BY LAW FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES BUT HAVE BEEN INACTIVE OR HAVE NOT BEEN PUBLISHED; AMENDING SECTIONS 40-5-906, 50-4-803, 50-4-805, 53-1-703, 53-1-710, 53-1-711, 53-6-1005, AND 53-21-1002, MCA; REPEALING SECTIONS 50-4-810, 50-4-811, 53-1-704, 53-1-714, 53-10-201, 53-10-202, 53-10-203, 53-10-204, 53-10-211, AND 53-10-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case

registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with other IV-D agencies for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[8] An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice must, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit; *and*

~~(b) there is a board to act in an advisory capacity to the case registry and payment processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and payment processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members~~

who represent the department, appointed board members shall serve for terms of 2 years. The board consists of six members as follows:

- (i) a district court judge nominated by the district court judges' association;
- (ii) a clerk of court nominated by the association of clerks of the district courts;
- (iii) the supreme court administrator or the administrator's designee;
- (iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and
- (v) a representative of a county data processing unit, nominated by the association of clerks of the district courts.

(e)(b) the costs charged to the department under the contract or cooperative agreement may *do not* exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-291, 40-5-1046 through 40-5-1051, and this part. Rules must be drafted, adopted, and applied in a manner that:

- (a) minimizes the personal intrusiveness on the employer or employee of any requested information;
- (b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and
- (c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-291, 40-5-1046 through 40-5-1051, and this part. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 2. Section 50-4-803, MCA, is amended to read:

"50-4-803. Definitions. As used in this part, the following definitions apply:

(1) "Advisory group" means the community health centers advisory group provided for in 50-4-810.

(2)(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3)(2) "Federally qualified community health center" means a facility providing primary and preventive medical, dental, mental health, and substance abuse services to medically underserved, disadvantaged, or hard-to-reach populations on a sliding-scale fee basis, operating under federal regulations, and receiving federal funds under the Public Health Service Act, 42 U.S.C. 254b.

(4)(3) "Federally qualified health center look-alike" means a facility that meets all of the expectations established for the federally funded community health center program but does not receive federal operating funds under the Public Health Service Act, 42 U.S.C. 254b.

(5)(4) "Preventive care" means comprehensive care that emphasizes prevention, early detection, and early treatment of conditions, including but not limited to routine physical examinations, health screenings, immunizations, and health education.

(6)(5) "Primary care" means the type of medical care that provides a patient with a broad spectrum of preventive and curative health care services over a long period of time and that coordinates all of the care a patient receives.

(7)(6) "Section 330 funds" means the federal funds commonly known by that name and awarded by the health resources and services administration of the U.S. department of health and human services to health centers that qualify for funding under the Public Health Service Act, 42 U.S.C. 254b."

Section 3. Section 50-4-805, MCA, is amended to read:

“50-4-805. Program expenditures --report to legislature. (1) Subject to appropriation by the legislature, the department shall provide competitive grants in accordance with 50-4-806 and this section to community or tribal boards operating as a nonprofit entity in accordance with the Public Health Service Act, 42 U.S.C. 254b, to increase access to primary care and preventive health services for uninsured, underinsured, low-income, or underserved Montanans.

(2) Grants must be made each year to accomplish any of the following goals:

(a) to create and support new nonfederally funded community health centers with state funding for a maximum of 6 years or until federal funds are granted. Successful applicants for the state grants shall also apply for federally qualified health center look-alike status and federal community health center grants at the first available opportunity.

(b) to expand the medical, mental health, or dental services offered by existing federally qualified community health centers or other facilities that have received federally qualified health center look-alike status; and

(c) to provide one-time grants for capital expenditures to existing federally qualified community health centers and facilities with federally qualified health center look-alike status.

(3) The department shall contract with an entity that is able to:

(a) provide technical assistance to new and existing federally qualified community health centers in their efforts to apply for federal funds;

(b) assist new and existing centers in their efforts to expand services; and

(c) collect standardized data on the provision of services to low-income and uninsured Montanans.

(4) The department shall require the contractor to provide an annual report on the services it has provided, the data it has collected, and the status of applications for federal community health center funding.

~~(5) The department shall report to the legislature, as provided for in 5-11-210, the following information for each year of the biennium:~~

~~(a) the status of the expenditures made pursuant to this part;~~

~~(b) the number of people served by the expenditure of funds; and~~

~~(c) the costs to the state of the services provided pursuant to this part.”~~

Section 4. Section 53-1-703, MCA, is amended to read:

“53-1-703. Definitions. As used in this part, the following definitions apply:

(1) “Approved 2-1-1 service provider” means a public or nonprofit agency or organization designated by the department to provide 2-1-1 services.

~~(2) “Coalition” means the Montana 2-1-1 community coalition provided for in 53-1-704.~~

~~(3)~~(2) “Department” means the department of public health and human services.

~~(4)~~(3) “2-1-1” means the abbreviated dialing code assigned by the federal communications commission on July 21, 2000, for consumer access to community information and referral services.

~~(5)~~(4) “2-1-1 service area” means an area of the state of Montana identified by the department as an area in which an approved 2-1-1 service provider will provide 2-1-1 services.”

Section 5. Section 53-1-710, MCA, is amended to read:

“53-1-710. Approved 2-1-1 service providers. (1) Only an approved service provider may provide 2-1-1 telephone services after July 1, 2006. The department, ~~in consultation with the coalition,~~ shall approve 2-1-1 service providers after considering the following:

(a) the ability of the proposed 2-1-1 service provider to meet the national 2-1-1 standards recommended by the alliance of information and referral systems and adopted by the national 2-1-1 collaborative in October 2002;

(b) the financial stability of the proposed 2-1-1 service provider;

(c) the community support for the proposed 2-1-1 service provider;

(d) the proposed 2-1-1 service provider's relationships with other information and referral services;

(e) the proposed 2-1-1 service provider's record of providing existing 2-1-1 services; and

(f) the proposed 2-1-1 service area.

(2) An existing 2-1-1 service provider may apply for the geographical area in which the service provider is currently approved to offer 2-1-1 telephone services."

Section 6. Section 53-1-711, MCA, is amended to read:

"53-1-711. Scope of 2-1-1 service. (1) The statewide 2-1-1 system shall ensure provision of services in all counties of the state.

(2) The statewide 2-1-1 system must be administered by the department in consultation with the coalition. The department, in consultation with the coalition, shall approve a strategic plan for service delivery and divide the state into no more than 8 regions.

(3) The statewide 2-1-1 system shall ensure that all approved 2-1-1 service providers provide the following scope of service:

(a) provide information and referral services to each inquirer for the inquirer's designated geographic area through well-trained staff or volunteers who are knowledgeable about local resources;

(b) create and maintain a database of community resources and referrals for the service provider's designated geographic area;

(c) provide appropriate services to crisis callers, which includes stabilization or safety assessment and connection to further resources such as crisis lines, domestic violence shelters, and rape victim advocates;

(d) provide information to the department regarding 2-1-1 service usage including data on callers, service needs, and resource gaps;

(e) provide support to community and disaster and emergency services providers in the case of a disaster or emergency; and

(f) participate in any publicity plan for the statewide 2-1-1 system in Montana."

Section 7. Section 53-6-1005, MCA, is amended to read:

"53-6-1005. Department administration – pharmacy access. (1) The department shall administer the pharmacy access program. The department shall provide for outreach and enrollment in the pharmacy access program. The department shall integrate the enrollment and outreach procedures with other services provided to individuals and families eligible for other related programs.

(2) The department shall report on Montana's prescription drug use, needs, and trends and submit a report with recommendations to the governor and to the legislature by September 15, 2006."

Section 8. Section 53-21-1002, MCA, is amended to read:

"53-21-1002. Duties of department. The department:

(1) shall take cognizance of matters affecting the mental health of the citizens of the state;

(2) shall initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The department shall initiate and operate services in cooperation with local agencies, service

area authorities, mental health professionals, and other entities providing services to persons with mental illness.

(3) shall specifically address:

- (a) provider contracting;
- (b) service planning;
- (c) preadmission screening and discharge planning;
- (d) quality management;
- (e) utilization management and review;
- (f) consumer and family education; and
- (g) rights protection;

(4) shall collect and disseminate information relating to mental health;

(5) shall prepare and maintain a comprehensive plan to develop public mental health services in the state and to establish service areas;

(6) must receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(7) shall establish qualified provider certification standards by rule, which may include requirements for national accreditation for mental health programs that receive funds from the department;

(8) shall perform an annual review and evaluation of mental health needs and services within the state by region and evaluate the performance of programs that receive funds from the department for compliance with federal and state standards;

(9) shall coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances, as provided in Title 52, chapter 2, part 3; and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

(10) shall coordinate the establishment of service area authorities, as provided in 53-21-1006, to collaborate with the department in the planning and oversight of mental health services in a service area.”

Section 9. Repealer. The following sections of the Montana Code Annotated are repealed:

50-4-810. Advisory group.

50-4-811. Advisory group -- purpose and role.

53-1-704. Montana 2-1-1 community coalition -- advisory capacity.

53-1-714. Reporting.

53-10-201. Legislative findings, purpose, and intent.

53-10-202. Definitions.

53-10-203. Commission on provider rates and services.

53-10-204. Duties of commission on provider rates and services.

53-10-211. Department to assist and cooperate with commission on provider rates and services -- records privacy.

53-10-212. Commission findings, recommendations, and reports.

Section 10. Effective date. [This act] is effective July 1, 2017.

Approved March 20, 2017

CHAPTER NO. 82

[SB 82]

AN ACT PROVIDING STANDARDS AND REQUIREMENTS FOR MEDICAID OVERPAYMENT AUDITS; PROVIDING REQUIREMENTS FOR

RECORD REQUESTS AND REVIEWS; PROHIBITING DETERMINATION OF OVERPAYMENTS BY EXTRAPOLATION EXCEPT IN CERTAIN CIRCUMSTANCES; PROVIDING FOR NOTICE OF AUDIT RESULTS; REQUIRING PROVIDER EDUCATION AND AUDITOR EVALUATION; REQUIRING THE PUBLICATION OF AUDIT RESULTS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 53-6-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 10], unless expressly provided otherwise, the following definitions apply:

(1) "Abuse" means conduct by a provider or other person involving disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance program when the disregard or failure results or may result in medical assistance payments to which the provider is not entitled.

(2) "Auditor" means an individual or an entity, its agents, subcontractors, and employees that have contracted with the department to perform overpayment audits with respect to the medicaid program. The term includes a recovery audit contractor.

(3) "Automated review" means a claim review that is made at the system level without a human being reviewing the medical record.

(4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form, that is used to claim specific services or items as payable or reimbursable under the medicaid program. The term includes any documents submitted as part of or in support of the claim.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Document" means an application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.

(7) "Extrapolation" means the determination of an unknown value by projecting the results of a review of a sample to the universe from which the sample was drawn.

(8) "Followup audit" means a followup overpayment audit of additional claims data or provider records or both for a particular service code reviewed in an initial overpayment audit after an initial audit has demonstrated a significant error rate with respect to the code to determine whether the provider has complied with applicable medicaid rules, regulations, policies, and agreements.

(9) "Fraud" means conduct or activity prohibited by statute, regulation, or rule involving purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid payments to which a provider is not entitled. Fraud includes but is not limited to any conduct or omission under the medicaid program that would constitute a criminal offense under Title 45, chapter 6 or 7.

(10) "High-risk provider" means a provider who within the previous 6 years and 3 months:

(a) has either admitted to medicaid fraud or abuse in a written agreement with a governmental agency or has been determined by a final order or judgment of a governmental agency or court to have committed medicaid fraud or abuse; or

(b) has a documented history of a significant error rate that has been sustained over a period of at least 2 years and that multiple documented educational interventions have failed to correct.

(11) “Initial audit” means an initial overpayment audit to examine claims data and provider records or both to determine whether the provider has complied with applicable medicaid rules, regulations, policies, and agreements.

(12) “Medicaid” means the Montana medical assistance program established under Title 53, chapter 6.

(13) (a) “Overpayment audit” means a review or audit by the department or an auditor of claims data, medical claims, or other documents in which a purpose or potential result of the review or audit is an overpayment determination. The term includes an initial audit and a followup audit.

(b) The term does not include a review or audit by the medicaid fraud control unit.

(14) “Overpayment determination” means a determination by the department or an auditor that forms the basis for or results in the department:

(a) partially or completely reducing a medicaid payment to a provider for a claim;

(b) demanding that the provider repay all or a part of a payment for a claim; or

(c) using or applying any other method to recoup, recover, or collect from a provider all or part of a payment for a claim.

(15) “Peer” means a health care provider who is employed by or under contract with the department or an auditor and who:

(a) has substantially the same education and training, provides or has provided substantially the same range of health care services, and has the same license to practice as the provider who is the subject of an overpayment audit; or

(b) is an expert in the medical, dental, mental health, behavioral health, or other health care provider decisionmaking that is at issue in the overpayment audit.

(16) “Provider” means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program established under this chapter.

(17) (a) “Records” means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

(i) pertaining to the provision of treatment, care, services, or items to an individual receiving services under the medicaid program;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The term includes all such records and documents made and maintained by the provider regardless of whether the records are required by medicaid laws, regulations, rules, or policies.

(18) “Recovery audit contractor” means a medicaid recovery audit contractor selected by the department to perform audits for the purpose of ensuring medicaid program integrity in accordance with 42 CFR, part 455.

(19) “Significant error rate” means previous billing errors greater than 5% of the total lines reviewed.

Section 2. Overpayment audit procedures – provider records – limitations on record requests and reviews – onsite audits. (1) When conducting an overpayment audit, the department or an auditor shall:

(a) allow the provider at least 30 days to comply with a request to provide records;

(b) include in a request for records adequate information to allow the provider to identify the particular records sought;

(c) allow providers to submit the requested records in an electronic format; and

(d) allow reasonable extensions of the 30-day compliance period for good cause.

(2) If an auditor is conducting an overpayment audit and requires the provider to provide records in a nonelectronic format, the auditor shall reimburse the provider for the cost of providing the records.

(3) (a) For an initial overpayment audit, the department or an auditor may request up to 6 months of records from a provider for claims paid by the medicaid program up to 3 years before the request was made.

(b) If the department or an auditor demonstrates a significant error rate, the department or the auditor with the department's approval may request additional records related to the issue under review for purposes of a followup audit.

(c) The 3-year limitation in subsection (3)(a) does not apply to a record request by the department or auditor for purposes of a followup audit but does apply to such a request by a recovery audit contractor.

(4) The department or an auditor may not request records or perform an overpayment audit regarding services that were provided outside the period of time for which providers are required by applicable law to retain records for purposes of the medicaid program.

(5) Except in cases of suspected fraud or criminal conduct, the department or an auditor may not schedule an onsite overpayment audit without first providing written notice at least 10 days in advance of the onsite audit. The department or auditor shall make a good faith effort to establish a mutually agreed-upon date and time for the onsite audit.

Section 3. Extrapolation and statistical sampling prohibited – exceptions. (1) Except as provided in subsection (2):

(a) in conducting an initial overpayment audit, the department or an auditor may not use statistical sampling extrapolation for automated reviews and may not rely on extrapolation to determine or support the amount of an overpayment determination; and

(b) an overpayment determination must be based on and supported by evidence of an overpayment for each claim.

(2) In an overpayment audit of a high-risk provider or a followup audit of any provider, the department or an auditor may use statistical sampling extrapolation for an automated review or may rely on extrapolation to determine or support the amount of an overpayment determination.

(3) The department or an auditor may use data analysis techniques to identify claims that are most likely to contain overpayments for purposes of selecting providers or claims for overpayment audits.

Section 4. Peer review of overpayment findings. (1) (a) A provider's request for an administrative review of an overpayment determination may include a request for peer review of any clinical or professional judgment upon which the overpayment determination relies. A clinical or professional judgment includes but is not limited to any clinical or professional judgment upon which the provider's evaluation, treatment, records, coding, or billing is based.

(b) The provider's peer review request must identify each clinical or professional judgment to be reviewed and include a statement of the provider's opinion regarding the identified clinical or professional judgment.

(2) If a provider requests peer review, the department shall obtain and consider as part of its administrative review a peer review of each clinical or professional judgment upon which the overpayment determination relied. The department shall mail a copy of the peer review to the provider within 10 days of receipt. The department may not issue its administrative review determination or demand or collect repayment of the alleged overpayment until the department has obtained and considered the peer review.

(3) If at any time during an administrative review, appeal, or other legal proceedings regarding an overpayment determination the department relies on a clinical or professional judgment not identified in the initial notice of overpayment determination and for which a peer review was not previously requested, obtained, or considered, the provider may request in writing that peer review be conducted in accordance with this section. The proceedings must be suspended or stayed until the department has obtained, considered, and responded in writing to the peer review.

Section 5. Audit completion – notice of overpayment determination – opportunity to resubmit claim. (1) The department or an auditor shall conclude an overpayment audit and notify the provider in writing of the audit results, including any overpayment determination, within 90 days of:

(a) the receipt of all records requested in the department's or the auditor's initial record request;

(b) a determination regarding fraud in cases in which the department investigates a credible allegation of fraud; or

(c) the conclusion of an investigation and any related enforcement proceedings if a government agency or entity other than the department is conducting a civil fraud or criminal investigation of the provider and the government agency or entity conducting the investigation determines and notifies the department in writing that providing earlier notification would interfere with or jeopardize the investigation, recovery of a fraudulent overpayment, or criminal prosecution.

(2) A notice of overpayment determination, including any notice of audit results under subsection (1) that includes a notice of overpayment determination, must include a detailed explanation of the overpayment determination, including at a minimum:

(a) a description of the overpayment;

(b) the dollar value of the overpayment;

(c) the specific reason for the overpayment determination;

(d) the specific medical criteria and any clinical and professional judgment upon which the determination is based;

(e) in cases in which an overpayment resulted from incorrect billing rather than a lack of medical necessity or failure to provide the services or items in accordance with applicable requirements, a statement that the provider may submit a new claim or claim adjustment as provided in 53-6-111;

(f) the action to be taken by the department;

(g) an explanation of any action required of the provider; and

(h) an explanation of the provider's right to appeal.

Section 6. Publication of audit results. At least once a year the department shall publish and make accessible on its website the following information regarding all medicaid overpayment audits:

(1) the number and type of issues reviewed;

(2) the number of medical and other records requested from providers;

- (3) the number of audits conducted by provider type;
- (4) the number and aggregate dollar amounts of:
 - (a) overpayments identified;
 - (b) overpayments collected; and
 - (c) underpayments identified;
- (5) the duration of audits from initiation to completion;
- (6) the number of overpayment determinations and the reversal rates of those determinations at each stage of the informal and formal appeal process;
- (7) the number of informal and formal appeals filed by providers, categorized by disposition status; and
- (8) the auditor's compensation structure and total dollar amount of compensation for underpayments and overpayments.

Section 7. Audit education and training. In order to carry out the requirements of 53-6-160(6) and to reduce claims errors, the department shall provide:

(1) educational and training programs for providers at least twice a year to discuss a summary of audit results, common issues and problems, mistakes identified through audits, and opportunities for improvement in provider performance related to claims billings and documentation; and

(2) information on the department's website regarding recurring audit issues, including at a minimum a description of each recurring audit issue, the types of providers affected, the review period in which the audit issues occurred, and any applicable department policy or rule related to the issue.

Section 8. Applicability to auditor – scope. (1) An auditor performing or participating in an overpayment audit, overpayment determination, or related activity is subject to the same laws and regulations that would apply to the department in carrying out the same functions.

(2) [Sections 1 through 10] do not apply to the medicaid fraud control unit provided for in 53-6-156 but apply to an overpayment audit, overpayment determination, or related activity by the department or an auditor that is based on or arises out of a medicaid fraud control unit investigation or referral.

Section 9. Auditor evaluation hearings – adoption of rules. At least once a year, the department shall conduct auditor evaluation hearings to identify issues, recommend or require corrective actions, and provide for ongoing and future evaluation of auditor performance. With input from providers, including comments gathered at the auditor evaluation hearings, the department shall adopt rules for:

(1) appropriate and inappropriate conduct and determinations by auditors; and

(2) penalties and sanctions for inappropriate conduct and determinations.

Section 10. Absorption of costs. Any cost incurred by the department of public health and human services in implementing 53-6-111 and [sections 1 through 10] must be absorbed into the department's existing budget.

Section 11. Section 53-6-111, MCA, is amended to read:

“53-6-111. Department charged with administration and supervision of medical assistance program – overpayment recovery – sanctions for fraudulent and abusive activities – adoption of rules. (1)

(a) The department of public health and human services may administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in Title 53, chapter 2, and this chapter and that is in compliance with Title XIX of the Social Security Act.

(b) *When submitting a claim for reimbursement, a provider or the provider's agent may reasonably rely on written instructions and advice provided by the department pursuant to 53-6-160 and [section 7].*

(2) (a) The department is entitled to collect from a provider, and a provider is liable to the department for:

(i) the amount of a payment under this part to which the provider was not entitled if the incorrect payment was the result of the provider's error, *except as provided in subsection (3)*, or if the provider's interpretation of the pertinent rule or billing code is not reasonable; and

(ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the department for the rate period.

(b) If the decision regarding the amount of a payment to which the provider was not entitled depends on an interpretation of a pertinent rule or billing code, the provider has the burden of proving that its interpretation is reasonable and consistent with:

(i) the information given to providers in any applicable Montana medicaid provider rules or manual, including but not limited to the Coding Resources identified in or incorporated by reference in any applicable Montana medicaid provider rule or manual; and

(ii) any written interpretations by the department that were in existence at the time payment was made to the provider.

(c) In addition to the amount of overpayment recoverable under subsection (2)(a), the department is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30 days after the date of mailing of notice of the overpayment by the department to the provider, except that interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

(d) The department may collect any amount described in subsection (2)(a) by:

(i) withholding current payments to offset the amount due;

(ii) applying methods and using a schedule mutually agreeable to the department and the provider; or

(iii) any other legal means.

(e) The department may suspend payments to a provider for disputed items pending resolution of a dispute *only as allowed under 42 CFR 455.23 as of [the effective date of this act]*.

(f) The fact that a provider may have ceased providing services or items under the medical assistance program, may no longer be in business, or may no longer operate a facility, practice, or business does not excuse repayment under this subsection (2).

(3) In an overpayment determination involving medically necessary services that were provided in accordance with applicable medicaid requirements but were improperly billed, a provider must be allowed to submit a new claim or claim adjustment for the services and the claim or adjustment must be considered to be timely filed if submitted within 60 days of notice of the overpayment determination.

~~(3)~~(4) The department shall adopt rules establishing a system of sanctions applicable to providers who engage in fraud and abuse. Subject to the definitions in 53-6-155, the department rules must include but are not limited to specifications regarding the activities and conduct that constitute fraud and abuse.

~~(4)~~(5) Subject to subsections ~~(5)~~ (6) and ~~(6)~~ (8), the sanctions imposed under rules adopted by the department under subsection ~~(3)~~ (4) may include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) suspension of participation in the program for a specified period of time;

(c) permanent termination of participation in the medical assistance program; and

(d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties applicable to a specific activity, act, or omission involving intentional or knowing violation of specified standards.

~~(5)(6)~~ In all cases in which the department may recover medicaid payments or impose a sanction, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6. ~~This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to recovery of overpayment. The department may not recover an overpayment until all formal hearings and appeals are exhausted except in cases in which the department is investigating a credible allegation that the overpayment was the result of fraud.~~

(7) (a) *If the department or an auditor identifies an underpayment to a provider, the department shall:*

(i) notify the provider in writing; and

(ii) within 30 days of identification of the underpayment, pay the provider the additional amount to which the provider is entitled.

(b) If payment depends upon the provider's submission of a new claim or claim adjustment, a new claim or claim adjustment is timely filed if submitted within 60 days of notice of the underpayment.

~~(6)(8)~~ The remedies provided by this section are separate and cumulative to any other administrative, civil, or criminal remedies available under state or federal law, regulation, rule, or policy.”

Section 12. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 10].

Section 13. Effective date. [This act] is effective July 1, 2017.

Section 14. Applicability. [This act] applies to overpayment audits, record requests, and overpayment determinations made or commenced on or after [the effective date of this act].

Approved March 20, 2017

CHAPTER NO. 83

[SB 131]

AN ACT PROVIDING THAT SECTIONS 7, 9, AND 27 OF INITIATIVE MEASURE NO. 182 (2016) ARE EFFECTIVE WHEN INITIATIVE MEASURE NO. 182 (2016) WAS PASSED AND APPROVED BY THE PEOPLE OF MONTANA ON NOVEMBER 8, 2016; AMENDING SECTION 27, INITIATIVE MEASURE NO. 182, APPROVED NOVEMBER 8, 2016; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, pursuant to Article V, section 1, of the Montana Constitution, the legislative power is vested exclusively in a Legislature and in the people of Montana through initiative and referendum; and

WHEREAS, Article III, section 1, of the Montana Constitution specifically provides that the power of the government of this state is divided into three distinct branches--legislative, executive, and judicial--and that no person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others; and

WHEREAS, the powers reserved to the Legislature and the people in Article V, section 1, of the Montana Constitution were disregarded, and the powers separated by Article III, section 1, of the Montana Constitution and

not properly belonging to the Judicial Branch were exercised in Montana Cannabis Industry Association and Danielle Muggli vs. Montana Department of Public Health and Human Services by ordering that the effective dates set out in Initiative Measure No. 182 (2016) and voted on by the people of Montana be changed; and

WHEREAS, the Montana Legislature, through this bill, is properly exercising its constitutional legislative power vested exclusively in the Legislature and the people of Montana to change the effective dates in I-182.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27, Initiative Measure No. 182, approved November 8, 2016, is amended to read:

“**NEW SECTION. Section 27. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective June 30, 2017.

(2) [Sections 3, 4, 5, 9 7, 9, and 20] *and this section* are effective on passage and approval.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2017

CHAPTER NO. 84

[HB 24]

AN ACT PROVIDING TO VULNERABLE PERSONS PROTECTIONS FROM FINANCIAL EXPLOITATION; PROVIDING FOR REPORTING OF FINANCIAL EXPLOITATION BY INVESTMENT ADVISERS AND OTHER QUALIFIED INDIVIDUALS; ALLOWING FOR THE DELAY OF DISBURSEMENTS; PROVIDING IMMUNITY; REQUIRING THE PROVISION OF RECORDS TO LAW ENFORCEMENT AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING DEFINITIONS; AMENDING SECTIONS 30-10-103 AND 30-10-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Governmental disclosure – immunity. (1) If a qualified individual, investment adviser, investment adviser representative, or salesperson reasonably believes that financial exploitation of a vulnerable person may have occurred, may have been attempted, or is being attempted, the qualified individual, investment adviser, investment adviser representative, or salesperson may promptly report the suspected exploitation to the commissioner in the manner outlined in the broker-dealer’s or investment adviser’s policies and procedures for reporting suspected exploitation. If the policies and procedures do not have a manner outlined, the qualified individual, investment adviser, investment adviser representative, or salesperson may report the suspected exploitation directly to the commissioner.

(2) A qualified individual, investment adviser, investment adviser representative, or salesperson who, in good faith and exercising reasonable care, makes a disclosure of information under this section is immune from administrative or civil liability that might otherwise arise from the disclosure or from any failure to notify the vulnerable person or the person’s agent of the disclosure.

Section 2. Third-party disclosure – immunity. (1) If a qualified individual, investment adviser, investment adviser representative, or salesperson reasonably believes that financial exploitation of a vulnerable

person may have occurred, may have been attempted, or is being attempted, the qualified individual, investment adviser, investment adviser representative, or salesperson may notify any third party closely connected to the vulnerable person. Disclosure may not be made to a third party who is suspected of financial exploitation or other abuse of the vulnerable person.

(2) A qualified individual, investment adviser, investment adviser representative, or salesperson who, in good faith and exercising reasonable care, complies with this section is immune from administrative or civil liability that might otherwise arise from the disclosure.

Section 3. Delaying disbursements – immunity. (1) A broker-dealer or investment adviser may delay a disbursement from an account of a vulnerable person or an account on which a vulnerable person is a beneficiary if:

(a) the broker-dealer, the investment adviser, or a qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of the vulnerable person; and

(b) the broker-dealer or investment adviser:

(i) not more than 2 business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless the party is reasonably believed to have engaged in suspected or attempted financial exploitation of the vulnerable person;

(ii) not more than 2 business days after the requested disbursement, notifies the commissioner; and

(iii) continues the internal review of the suspected or attempted financial exploitation of the vulnerable person, as necessary, and reports the investigation's results to the commissioner within 7 business days after the requested disbursement.

(2) A delay of a disbursement authorized under this section expires upon the sooner of:

(a) a determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the vulnerable person; or

(b) 15 business days after the date on which the broker-dealer or investment adviser first delayed the disbursement, unless the commissioner requests that the broker-dealer or investment adviser extend the delay. If extended, the delay expires no more than 25 business days after the date on which the broker-dealer or investment adviser first delayed the disbursement, unless the delay is terminated sooner by the commissioner or by an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the disbursement beyond the timeframe provided in subsection (2) or may order other protective relief based on a petition of the commissioner, the broker-dealer or investment adviser who initiated the delay under this section, or an interested party.

(4) A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies with this section is immune from administrative or civil liability that might otherwise arise from the delay in a disbursement in accordance with this section.

Section 4. Records. (1) A broker-dealer or investment advisor shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of a vulnerable person to the department of public health and human services provided for in 2-15-2201 and to law enforcement, either

as part of a referral to the department or to law enforcement or on request of the department or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction that may constitute financial exploitation of the vulnerable person.

(2) All records made available pursuant to this section are confidential information as defined in 2-6-1002.

(3) Nothing in this section limits or otherwise impedes the authority of the commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Section 5. Section 30-10-103, MCA, is amended to read:

“30-10-103. (Temporary) Definitions. When used in parts 1 through 3 and 10 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) “Commissioner” means the securities commissioner provided for in 2-15-1901.

(3) (a) “Commodity” means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) “Commodity Exchange Act” means the federal statute of that name.

(5) “Commodity futures trading commission” means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) “Commodity investment contract” means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any

commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) A federal covered adviser is not an investment adviser as defined in subsection (11) (12).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Financial exploitation" means:

(a) *the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a vulnerable person; or*

(b) *an act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of a vulnerable person, to:*

(i) *obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property; or*

(ii) *convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.*

(11) (11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(12) (12) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) (12)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) (12)(a) to others for compensation.

(c) The term does not include:

- (i) an investment adviser representative;
- (ii) a bank, savings institution, trust company, or insurance company;
- (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;
- (iv) a registered broker-dealer whose performance of services described in subsection ~~(11)(a)~~ (12)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;
- (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;
- (vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);
- (vii) an engineer or teacher whose performance of the services described in subsection ~~(11)(a)~~ (12)(a) is solely incidental to the practice of the person's profession;
- (viii) a federal covered adviser; or
- (ix) other persons not within the intent of this subsection ~~(11)~~ (12) as the commissioner may by rule or order designate.

~~(12)~~(13) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection ~~(12)(a)~~ (13)(a) of this section is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 and 10 of this chapter.

~~(13)~~(14) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant

to the provisions of the trust or other agreement or instrument under which the security is issued.

~~(14)~~(15) “Nonissuer” means not directly or indirectly for the benefit of the issuer.

~~(15)~~(16) “Offer” or “offer to sell” includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

~~(16)~~(17) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~(17)~~(18) “Precious metal” means the following, in coin, bullion, or other form:

- (a) silver;
- (b) gold;
- (c) platinum;
- (d) palladium;
- (e) copper; and
- (f) other items as the commissioner may by rule or order specify.

(19) “*Qualified individual*” means a person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

~~(18)~~(20) “Registered broker-dealer” means a broker-dealer registered pursuant to 30-10-201.

~~(19)~~(21) “Sale” or “sell” includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

~~(20)~~(22) (a) “Salesperson” means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

- (i) an issuer in:
 - (A) effecting a transaction in a security exempted by 30-10-104(1) through (3) or (8) through (11);
 - (B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

~~(21)~~(23) “Securities Act of 1933”, “Securities Exchange Act of 1934”, “Energy Policy Act of 2005”, “Investment Advisors Act of 1940”, and “Investment Company Act of 1940” mean the federal statutes of those names.

~~(22)~~(24) (a) “Security” means any:

- (i) note;
- (ii) stock;
- (iii) treasury stock;
- (iv) bond;
- (v) commodity investment contract;
- (vi) commodity option;
- (vii) debenture;

(viii) evidence of indebtedness;
 (ix) certificate of interest or participation in any profit-sharing agreement;
 (x) collateral-trust certificate;
 (xi) preorganization certificate or subscription;
 (xii) transferable shares;
 (xiii) investment contract;
 (xiv) voting-trust certificate;
 (xv) certificate of deposit for a security;
 (xvi) viatical settlement purchase agreement;
 (xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or
 (xviii) in general:

(A) interest or instrument commonly known as a security;

(B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security; or

(C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items in this subsection ~~(22)(a)(xviii)~~ (24)(a)(xviii).

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

~~(23)~~(25) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

~~(24)~~(26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

~~(25)~~(27) "Vulnerable person" means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss; or

(c) a person who has a developmental disability as defined in 53-20-102; or

(d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy. (Terminates June 30, 2017--sec. 16, Ch. 58, L. 2011.)

30-10-103. (Effective July 1, 2017) Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies

as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) ~~The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii),~~

~~(11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix)~~ A federal covered advisor is not an investment advisor as defined in subsection (12).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Financial exploitation" means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a vulnerable person; or

(b) an act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of a vulnerable person, to:

(i) obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property; or

(ii) convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.

~~(10)(11)~~ "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

~~(11)(12)~~ (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection ~~(11)(a)~~ (12)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection ~~(11)(a)~~ (12)(a) to others for compensation.

(c) The term does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection ~~(11)(a)~~ (12)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection ~~(11)(a)~~ (12)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (~~11~~) (12) as the commissioner may by rule or order designate.

~~(12)~~(13) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection ~~(12)~~(a) (13)(a) of this section is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

~~(13)~~(14) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

~~(14)~~(15) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

~~(15)~~(16) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

~~(16)~~(17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~(17)~~(18) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(19) "Qualified individual" means a person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

~~(18)~~(20) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19)(21) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20)(22) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:

(A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21)(23) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22)(24) (a) "Security" means any:

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) commodity investment contract;

(vi) commodity option;

(vii) debenture;

(viii) evidence of indebtedness;

(ix) certificate of interest or participation in any profit-sharing agreement;

(x) collateral-trust certificate;

(xi) preorganization certificate or subscription;

(xii) transferable shares;

(xiii) investment contract;

(xiv) voting-trust certificate;

(xv) certificate of deposit for a security;

(xvi) viatical settlement purchase agreement;

(xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or

(xviii) in general:

(A) interest or instrument commonly known as a security;

(B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security; or

(C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items in this subsection ~~(22)(a)(xviii)~~ (24)(a)(xviii).

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of

money either in a lump sum or periodically for life or some other specified period.

~~(23)~~(25) “State” means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

~~(24)~~(26) “Transact”, “transact business”, or “transaction” includes the meanings of the terms “sale”, “sell”, and “offer”.

~~(25)~~(27) “Vulnerable person” means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss; **or**

(c) a person who has a developmental disability as defined in 53-20-102; **or**

(d) a person with a mental disorder. For the purposes of this subsection (27)(d), “mental disorder” means any organic, mental, or emotional impairment that has substantial adverse effects on an individual’s cognitive or volitional functions. The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy.”

Section 6. Section 30-10-1003, MCA, is amended to read:

“30-10-1003. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) “Claimant” means a person who files an application for restitution assistance under this part on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) “Department” means the office of the securities commissioner established in 2-15-1901.

(3) “Final order” means a final order issued by the commissioner or a final order in a legal action initiated by the commissioner.

(4) “Fund” means the securities restitution assistance fund created by 30-10-1004.

(5) “Securities violation” means a violation of this chapter and any related administrative rules.

(6) “Victim” means a person who was awarded restitution in a final order.

(7) “Vulnerable person” means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss; **or**

(c) a person who has a developmental disability as defined in 53-20-102; **or**

(d) a person with a mental disorder. For the purposes of this subsection (7)(d), “mental disorder” means any organic, mental, or emotional impairment that has substantial adverse effects on an individual’s cognitive or volitional functions. The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy. (Terminates June 30, 2017--sec. 16, Ch. 58, L. 2011.)”

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 10, part 3, and the provisions of Title 30, chapter 10, part 3, apply to [sections 1 through 4].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2017

CHAPTER NO. 85

[HB 119]

AN ACT REVISING THE QUALITY EDUCATOR LOAN ASSISTANCE PROGRAM; EMPHASIZING GEOGRAPHIC ISOLATION AS A FACTOR IN IDENTIFYING SCHOOLS IMPACTED BY CRITICAL QUALITY EDUCATOR SHORTAGES; MODIFYING THE ASSISTANCE ELIGIBILITY SCHEDULE; AND AMENDING SECTIONS 20-4-501, 20-4-503, 20-4-505, AND 20-4-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-501, MCA, is amended to read:

“20-4-501. Quality educator loan assistance program – purpose. (1)

There is a quality educator loan assistance program administered by the board of regents through the office of the commissioner of higher education. The program must provide for the direct repayment of educational loans of eligible quality educators in accordance with policies and procedures adopted by the board of regents in accordance with this part.

(2) *The purpose of this program is to aid quality educator recruitment and retention for those schools most impacted by critical quality educator shortages. The program must be implemented in a manner that maximizes recruitment and retention assistance to impacted schools.*”

Section 2. Section 20-4-503, MCA, is amended to read:

“20-4-503. Critical quality educator shortages. (1) The board of public education, in consultation with the office of public instruction, shall identify:

(a) specific schools that are impacted by critical quality educator shortages; and

(b) within the schools identified in subsection (1)(a), the specific quality educator licensure or endorsement areas that are impacted by critical quality educator shortages.

(2) *In identifying impacted schools under subsection (1)(a), the board of public education, in consultation with the office of public instruction, shall consider including the following:*

(a) *special education cooperatives;*

(b) *the Montana school for the deaf and blind, as described in 20-8-101;*

(c) *the Montana youth challenge program, as established in 10-1-1401;*

(d) *state youth correctional facilities, as defined in 41-5-103;*

(e) *public schools that are located on an American Indian reservation; and*

(f) *public schools that, driving at a reasonable speed for the road surface, are located:*

(i) *more than 45 minutes from a city with a population greater than 10,000 based on the most recent federal decennial census; or*

(ii) *more than 30 minutes from a city with a population greater than 4,300 based on the most recent federal decennial census.*

(2)(3) The board of public education shall publish by *December 1* an annual report listing the schools and the licensure or endorsement areas identified as impacted by critical quality educator shortages, explaining the reasons

that specific schools and licensure or endorsement areas have been identified and providing information regarding any success in retention. *The report must apply to the school year that begins July 1 following the publication of the report in order to assist recruitment by impacted schools. For the school year beginning July 1, 2017, eligibility for the program may be governed by the report adopted by the board of public education by December 1, 2017.*

~~(3)(4) Quality educators A quality educator working at schools a school identified in subsection (1) are is eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part."~~

Section 3. Section 20-4-505, MCA, is amended to read:

"20-4-505. Loan repayment assistance documentation. (1) A quality educator shall submit an application for loan repayment assistance to the board of regents in accordance with policies and procedures adopted by the board of regents. The application must include official verification or proof of the applicant's total unpaid accumulated educational loan debt and other documentation required by the board of regents that is necessary for verification of the applicant's eligibility.

(2) ~~A quality educator is eligible for loan repayment assistance for up to a maximum of 4 years. The total annual loan repayment assistance for an eligible quality educator may not exceed \$3,000.~~ The board of regents may require ~~an eligible~~ a quality educator who is eligible for loan repayment assistance to provide documentation that the quality educator has exhausted repayment assistance from other federal, state, or local loan forgiveness, discharge, or repayment incentive programs.

(3) *A quality educator is eligible for loan repayment assistance for no more than 3 years, with the maximum annual loan repayment assistance not to exceed:*

- (a) *\$3,000 after the first complete year of teaching in an impacted school;*
- (b) *\$4,000 after the second complete year of teaching in the same impacted school or another impacted school within the same school district; and*
- (c) *\$5,000 after the third complete year of teaching in the same impacted school or another impacted school within the same school district.*

~~(3)(4) The board of regents may remit payment of the loan on behalf of the quality educator in accordance with the requirements of this part and policies and procedures adopted by the board of regents."~~

Section 4. Section 20-4-506, MCA, is amended to read:

"20-4-506. Funding – priorities. (1) If the funding for this part in any year is less than the total amount for which Montana quality educators qualify, the board of regents shall provide preference in the award of loan repayment assistance to quality educators working in the specific ~~schools licensure or endorsement areas~~ that are most impacted by quality educator shortages identified as provided in 20-4-503.

(2) *If the funding for this part in any year is greater than the total amount for which Montana quality educators qualify, the board of public education shall consider expanding the number of impacted schools included in subsequent reports pursuant to 20-4-503.*

~~(2)(3) This part may not be construed to require the provision of loan repayment assistance without an express appropriation for that purpose. This part may not be construed to require loan repayment assistance for school years prior to July 1, 2007."~~

Approved March 22, 2017

CHAPTER NO. 86

[HB 146]

AN ACT PROVIDING WHEN TEMPORARY ROADBLOCKS MAY BE USED BY LAW ENFORCEMENT AGENCIES; AUTHORIZING RULEMAKING; AND AMENDING SECTIONS 46-5-502 AND 46-5-510, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-502, MCA, is amended to read:

“46-5-502. Authority to establish temporary roadblocks. (1) Any A law enforcement agency of this state is authorized to establish, within its jurisdiction, temporary roadblocks on the highways of this state for the purpose of to:

(a) apprehending ~~apprehend~~ persons known to be wanted for a violation of the laws of this state, of any other state, or of the United States who are using the highways of this state, identifying drivers, or checking for driver’s licenses, vehicle registration, and insurance;

(b) except as provided in 7-33-2212, respond to an active emergency; or

(c) respond to or mitigate conditions in areas where a significant number of known causal factors of motor vehicle accidents involving fatalities, injuries, or other serious legal violations are known to have occurred.

(2) During a temporary roadblock, verification of a valid driver’s license, vehicle registration, and insurance may be required.

(3) In the course of conducting a roadblock under subsection (1)(c), a law enforcement officer may not issue a ticket, citation, or summons for a secondary offense.

(4) For purposes of this section, the following definitions apply:

(a) “Active emergency” means an incident that threatens public safety, health, or welfare and requires immediate action.

(b) “Secondary offense” means a violation of an offense, including a violation of 61-13-103, for which a law enforcement officer may only issue a ticket, citation, or summons after the driver has already been stopped for a violation of another offense.”

Section 2. Section 46-5-510, MCA, is amended to read:

“46-5-510. Establishing temporary roadblock – plan required – exception. (1) A written plan for establishing a temporary roadblock pursuant to 46-5-502(1)(c) must:

(a) must be designed by supervisory officers within the law enforcement agency to ensure motorist safety, minimize motorist inconvenience, and prevent the arbitrary selection of vehicles by providing a schedule for the selection of vehicles to be stopped;

(b) be approved in advance of conducting the roadblock by supervisory officers within the law enforcement agency;

(c) ensure that a temporary roadblock is minimally intrusive and does not allow for unconstrained discretion by law enforcement agents performing the roadblock; and

(d) include:

(i) the purpose of the temporary roadblock;

(ii) the location, date, and time at which the temporary roadblock will be conducted;

(iii) the pattern sequence of vehicles to be stopped;

(iv) a drawing that shows how the temporary roadblock will be established;

(v) a copy of the public service announcement to be used to advertise the temporary roadblock; and

(vi) the names of the media to be notified of the temporary roadblock.

(2) All major media outlets in the area where the temporary roadblock is to be performed must be notified at least 48 hours prior to the scheduled temporary roadblock.

(3) This section does not apply to a roadblock established by a law enforcement agency pursuant to 46-5-502(1)(a) or (1)(b).

(4) The department of justice may adopt rules to implement the provisions of this part.”

Approved March 22, 2017

CHAPTER NO. 87

[SB 54]

AN ACT REPEALING A REQUIREMENT FOR THE DEPARTMENT OF ADMINISTRATION TO MAKE CERTAIN DETERMINATIONS WITH RESPECT TO THE ADEQUACY OF A CONTRACTOR'S ACCOUNTING SYSTEM; REPEALING A REQUIREMENT FOR CONTRACTS OTHER THAN FIRM FIXED-PRICE CONTRACTS TO HAVE THE DEPARTMENT OF ADMINISTRATION VERIFY THAT A CONTRACTOR'S ACCOUNTING SYSTEM TIMELY DEVELOPS NECESSARY COST DATA IN THE REQUISITE FORM AND ADEQUATELY ALLOCATES COSTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REPEALING SECTION 18-4-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

18-4-311. Approval of accounting system.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2017

CHAPTER NO. 88

[HB 152]

AN ACT ALLOWING COUNTIES TO ESTABLISH MOTOR VEHICLE RECYCLING AND DISPOSAL CAPITAL IMPROVEMENT FUNDS; DESIGNATING THE PURPOSE OF THE FUNDS; CAPPING ALLOCATIONS TO THE FUNDS; AMENDING SECTION 75-10-521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-521, MCA, is amended to read:

“75-10-521. Powers and duties of county motor vehicle recycling and disposal programs. (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this part.

(2) Two or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this part pertaining to a county also apply to a district formed under this subsection.

(3) When there is an accumulation of at least 200 junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(4) The county commissioners of each county shall designate a representative to be responsible for implementing this part.

(5) Each county, through its designated representative, shall inspect each licensed motor vehicle wrecking facility within its boundaries, consistent with rules adopted by the department.

(6) Each county may sell junk vehicles from the motor vehicle graveyard to licensed motor vehicle wrecking facilities. The sales may be conducted only pursuant to a plan that has been approved by the department for consistency with its rules.

(7) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(8) (a) The county shall submit to the department for approval a proposed budget for the succeeding fiscal year.

(b) The budget shall *must* be for the amounts required by the county for collection costs, acquisition, maintenance, and operation of the graveyard, *for funding of a motor vehicle recycling and disposal capital improvement fund established pursuant to subsection (9), if applicable*, and for other duties relating to implementation of this part.

(c) *Except as provided in subsection (8)(e), up to 10% of the budget may be designated to a motor vehicle recycling and disposal capital improvement fund established pursuant to subsection (9).*

(d) *Except as provided in subsection (8)(e), at the end of a fiscal year, unspent money may be transferred to a motor vehicle recycling and disposal capital improvement fund established pursuant to subsection (9).*

(e) *No allocations pursuant to this section may be made to a county's motor vehicle recycling and disposal capital improvement fund if the fund balance exceeds \$200,000. The fund may continue to earn interest and income from investments.*

(f) Any proposed change in the budget or plan must be approved by the department.

(9) (a) *A county may establish a motor vehicle recycling and disposal capital improvement fund in accordance with the provisions of 7-6-616.*

(b) *Money in a motor vehicle recycling and disposal capital improvement fund may be spent only for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve the county's motor vehicle recycling and disposal program."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2017

CHAPTER NO. 89

[HB 346]

AN ACT REVISING WORKERS' COMPENSATION LAWS TO RECOGNIZE CERTAIN FISCAL AGENTS AS EMPLOYERS; AND AMENDING SECTION 39-71-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-117, MCA, is amended to read:

“39-71-117. Employer defined. (1) “Employer” means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter;

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities; ~~and~~

(d) subject to subsection (5), a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for:

(i) manufacturing or construction activities conducted by its members on or off the property owned or leased by the religious corporation, religious organization, or religious trust; or

(ii) agricultural labor and services performed off the property owned or leased by the religious corporation, religious organization, or religious trust; *and*

(e) *an approved and authorized fiduciary, agent, or other person acting as fiscal agent under section 3504 of the Internal Revenue Code, 26 U.S.C. 3504, and 26 CFR 31.3504-1.*

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers'

compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed.

(5) The definition of "employer" in subsection (1)(d) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.

(6) (a) *A fiscal agent that qualifies under subsection (1)(e) and that is designated as a payor, using federal, state, or local government funds, under 26 CFR 31.3504-1 is considered to be the employer for the purposes of the Workers' Compensation Act of those workers for whom the fiscal agent is making payments.*

(b) *The client of the fiscal agent, despite exercising control over the hiring, scheduling, and direction of the work tasks performed by the worker, is not the employer of that worker for the purposes of the Workers' Compensation Act."*

Approved March 23, 2017

CHAPTER NO. 90

[HB 347]

AN ACT REVISING SPEECH-LANGUAGE PATHOLOGIST OR AUDIOLOGIST LICENSING LAWS; PROVIDING FOR A LIMITED SPEECH-LANGUAGE PATHOLOGIST OR AUDIOLOGIST LICENSE; REVISING FEE REFERENCES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-15-301, 37-15-303, AND 37-15-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-15-301, MCA, is amended to read:

"37-15-301. License required. (1) A license must be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if the person meets the respective qualifications, and in those instances, the license fee must be as though for one license.

(2) A person may not practice or represent to the public that the person is a speech-language pathologist or audiologist in this state unless the person is licensed in accordance with the provisions of this chapter.

(3) *The board may issue a limited license to qualified individuals engaged in supervised professional experience, as defined by board rule."*

Section 2. Section 37-15-303, MCA, is amended to read:

"37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant:

(a) must meet the current academic, supervised clinical practicum, and ~~postclassroom sponsored employment~~ *supervised professional experience* requirements as defined by board rule;

(b) shall pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

(3) The standards defined by the board must be equal to or greater than the standards generally accepted as the national norm.”

Section 3. Section 37-15-307, MCA, is amended to read:

“37-15-307. Application and examination fee – license fee – registration fee. The board shall determine the amount of fees prescribed in connection with, which may be adjusted annually by rule, that are necessary to meet costs and projected expenditures for:

- (1) a renewed license as a speech-language pathologist or audiologist;
- (2) a limited license for a person engaged in supervised professional experience;
- (3) an initial application for a license or registration;
- (4) examinations; and with
- (5) registration as a speech-language pathology aide or assistant or audiology aide or assistant ~~must be determined by the board each year based on costs and predicted expenditures.”~~

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2017

CHAPTER NO. 91

[SB 86]

AN ACT REVISING THE TAX FOR CERTAIN OIL PRODUCTION; REVISING THE PRICE OF OIL FOR WHICH INCREMENTAL PRODUCTION TAX RATES APPLY; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-304, MCA, is amended to read:

“15-36-304. Production tax rates imposed on oil and natural gas – exemption. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begin following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rates under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begin

following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%
(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rates under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for a barrel of west Texas intermediate crude oil during a calendar quarter is less than ~~\$30~~ \$54. If the price of oil is equal to or greater than ~~\$30~~ \$54 a barrel in a calendar quarter as determined in subsection (6)(e),

then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of west Texas intermediate crude oil during a calendar quarter is less than \$54. If the price of oil is equal to or greater than \$54 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$54.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil and gas natural resource distribution account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil and gas natural resource distribution account established in 90-6-1001(1) may not exceed 0.3%. The base rate for the tax for oil and gas natural resource distribution account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil and gas natural resource distribution account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to projects approved by the board of oil and gas conservation on or after [the effective date of this act].

Approved March 23, 2017

CHAPTER NO. 92

[SB 89]

AN ACT REVISING STANDARDS FOR DETERMINING GOOD CAUSE
IN TERMINATING OR NOT CONTINUING A NEW MOTOR VEHICLE

FRANCHISE; AMENDING SECTION 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-207, MCA, is amended to read:

“61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration *all* the existing circumstances, including but not limited to:

(a) the franchisee’s sales in relation to the *Montana* market *that are essential, reasonable, not discriminatory, and that take into account the franchisee’s local market variations beyond adjusting for the local popularity of general vehicle types*;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee’s part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

(g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and

(h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise’s terms and the parties’ relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee’s dealership;

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;

(c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or

(d) the desire of a franchisor or a franchisor’s representative:

(i) for *greater* market penetration; or

(ii) to ~~reduce~~ *alter* the number of the franchisor’s or franchisor’s representative’s franchises or dealer locations.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2017

CHAPTER NO. 93

[SB 108]

AN ACT PROHIBITING ENFORCEMENT OF A RIGHT OF FIRST REFUSAL IN NEW MOTOR VEHICLE FRANCHISE CONTRACTS; AMENDING SECTIONS 30-14-2502, 61-4-131, AND 61-4-208, MCA; REPEALING SECTION 61-4-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-2502, MCA, is amended to read:

“30-14-2502. (Temporary) Unfair trade practices – relationship between motorsports manufacturers and motorsports dealers. (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer may not:

(a) discriminate between motorsports dealers by:

(i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;

(ii) selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer;

(iii) using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on motorsports vehicles, parts, or accessories being charged to one motorsports dealer over another motorsports dealer; or

(iv) using a method of allocating, scheduling, or delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.

(b) give preferential treatment to some motorsports dealers over others by:

(i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a reasonable time after receipt of an order, any motorsports vehicle, parts, or accessories that are being delivered to other motorsports dealers;

(ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or

(iii) requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles;

(c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating,

or controlling, whether directly or indirectly, a motorsports dealership in this state;

(d) compete with a motorsports dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the motorsports manufacturer.

(e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete with the motorsports dealer without the prior written consent of the motorsports dealer;

(f) coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

(i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested;

(ii) buy, order, or pay anything of value other than the purchase price in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(iii) enter into any agreement that violates this chapter; or

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer;

or

(B) are required by law;

(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure or means of financing for a motorsports dealership if the motorsports dealer at all times meets reasonable, written, and uniformly applied capital standards determined by the motorsports manufacturer;

(h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and costs incurred by a motorsports dealer, arising from:

(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the motorsports dealer;

(ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;

(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or

(iv) any other act performed by the motorsports manufacturer;

(i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of motorsports products;

(j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the motorsports manufacturer;

(k) deny a motorsports dealer the right of free association with any other motorsports dealer for any lawful purpose;

(l) charge increased prices without having given written notice to the motorsports dealer at least 15 days before the effective date of the price increases;

(m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its motorsports dealers;

(n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for the motorsports manufacturer in the securing of a promissory note and a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

(o) ~~except as provided in 61-4-141,~~ require or coerce a motorsports dealer to grant the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's dealership or place of business, or both;

(p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;

(q) require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

(r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days;

(s) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.

(t) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.

(2) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:

(a) the motorsports vehicle will be sold or donated for use in a program of driver's education;

(b) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

(c) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer. (Terminates on occurrence of contingency--sec. 6(3), Ch. 240, L. 2009.)

30-14-2502. (Effective on occurrence of contingency) Unfair trade practices -- relationship between motorsports manufacturers and motorsports dealers. (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer may not:

(a) discriminate between motorsports dealers by:

(i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;

(ii) selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer;

(iii) using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on motorsports vehicles, parts, or accessories being charged to one motorsports dealer over another motorsports dealer; or

(iv) using a method of allocating, scheduling, or delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.

(b) give preferential treatment to some motorsports dealers over others by:

(i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a reasonable time after receipt of an order, any motorsports vehicle, parts, or accessories that are being delivered to other motorsports dealers;

(ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or

(iii) requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles;

(c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a motorsports dealership in this state;

(d) compete with a motorsports dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the motorsports manufacturer.

(e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete with the motorsports dealer without the prior written consent of the motorsports dealer;

(f) coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

(i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested;

(ii) buy, order, or pay anything of value other than the purchase price in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(iii) enter into any agreement that violates this chapter; or

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure or means of financing for a motorsports dealership if the motorsports dealer at all times meets

reasonable, written, and uniformly applied capital standards determined by the motorsports manufacturer;

(h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and costs incurred by a motorsports dealer, arising from:

(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the motorsports dealer;

(ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;

(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or

(iv) any other act performed by the motorsports manufacturer;

(i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of motorsports products;

(j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the motorsports manufacturer;

(k) deny a motorsports dealer the right of free association with any other motorsports dealer for any lawful purpose;

(l) charge increased prices without having given written notice to the motorsports dealer at least 15 days before the effective date of the price increases;

(m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its motorsports dealers;

(n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for the motorsports manufacturer in the securing of a promissory note and a security agreement given in connection with the sale of a motorsports vehicle or a policy of insurance for a motorsports vehicle or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

(o) ~~except as provided in 61-4-141~~, require or coerce a motorsports dealer to grant the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's dealership or place of business, or both;

(p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;

(q) require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

(r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days;

(s) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana;

(t) (i) offer a program where a Montana motorsports dealer would be eligible for a benefit or advantage that lowers the actual price of a motorsports vehicle, part, or accessory only if the motorsports dealer purchases from the motorsports manufacturer a quantity of motorsports vehicles, parts, or accessories as determined by the motorsports manufacturer unless:

(A) the motorsports dealer agrees in writing to the quantity of motorsports vehicles, parts, or accessories to be purchased as determined by the motorsports manufacturer; or

(B) the quantity determined by the motorsports manufacturer for each motorsports dealer is reasonable, fair, and equitable based upon the motorsports dealer's purchase history, the history of motorsports sales in the motorsports dealer's community, the motorsports dealer's present inventory of similar motorsports vehicles, parts, and accessories, the market conditions as of the effective date of the offer, and all other factors that are brought to the attention of the motorsports manufacturer by the motorsports dealer. For each offer to which this subsection (1)(t) applies, the motorsports manufacturer shall, if requested, provide the motorsports dealer with a statement in writing specifying the sales goal or objective relating to the offer for each of the motorsports manufacturer's Montana motorsports dealers, identifying each factor that was considered in determining each Montana motorsports dealer's sales goal and objective and explaining how each factor was evaluated and applied in determining the sales goal or objective for each Montana motorsports dealer.

(ii) For the purposes of this subsection (1)(t) "community" has the meaning provided in 61-4-201.

(u) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.

(2) (a) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:

(i) the motorsports vehicle will be sold or donated for use in a program of driver's education;

(ii) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

(iii) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer.

(b) Subsection (1)(a) does not apply to sales to a motorsports dealer pursuant to a motorsports manufacturer's promotional or incentive program under which eligibility for any benefit or advantage that would reduce the actual price of motorsports products to a motorsports dealer is determined based on the motorsports dealer meeting any sales goals or objectives if the motorsports dealer agrees in writing with the sales goals or objectives or the sales goals or objectives are reasonable, fair, and equitable and meet all of the requirements of subsection (1)(t)."

Section 2. Section 61-4-131, MCA, is amended to read:

"61-4-131. Definitions. As used in this part, the following definitions apply:

(1) "Broker" means a person:

(a) who engages in the business of offering to procure or procuring a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat,

a personal watercraft, a snowmobile, or an off-highway vehicle on behalf of another; or

(b) who represents to the public through solicitation, advertisement, or otherwise that the person is one who offers to procure or procures a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle by negotiating purchases, contracts, sales, or exchanges on behalf of another and who does not store, display, or take ownership of a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.

(2) (a) "Dealer", except as provided in subsection (2)(b), includes a new dealer or a used dealer licensed under this part.

(b) For purposes of 61-4-132 through 61-4-135, 61-4-137, ~~61-4-141~~, and 61-4-150, the term is limited to a new motor vehicle dealer as defined in 61-4-201.

(3) (a) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a new motor vehicle dealer, as defined in 61-4-201, who:

(i) in the case of a deceased dealer:

(A) is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will or under the laws of intestate succession of this state; or

(B) has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership; or

(ii) in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property.

(b) The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4) (a) "Established place of business" means the geographic location upon which a permanent building is located that is actually occupied either continuously or at regular periods by a person licensed under this part. A building is actually occupied if the licensee's books and records are kept in the building and, except for approved off-premises sales, the licensee's business is transacted within the building.

(b) A licensee's established place of business may also include the geographic location of one or more physical lots upon which vehicles are displayed for sale, as long as the requirements of 61-4-101(5)(e) regulating the distance between display lots and the recordkeeping building are met.

(c) The geographic location of the permanent building actually occupied by the licensee or the geographic location of the physical lots upon which vehicles are displayed for sale may be identified by street address, legal description, or other reasonably identifiable description, as prescribed by the department.

(5) "New", when describing a motor vehicle, power sports vehicle, or trailer, means that the motor vehicle, power sports vehicle, or trailer has not been the subject of a retail sale.

(6) "Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

(7) (a) "Power sports vehicle" includes a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.

(b) A motorcycle or quadricycle must be treated as an off-highway vehicle if the motorcycle or quadricycle is not originally equipped for use on a highway.

(c) A sailboat that is 12 feet in length or longer is treated as a motorboat.

(8) (a) “Trailer” has the meaning provided in 61-1-101, but does not include a trailer that has an unloaded weight of less than 500 pounds.

(b) A travel trailer, semitrailer, or pole trailer is treated as a trailer under this part.

(9) “Used”, when describing a motor vehicle, power sports vehicle, or trailer, means that title to the motor vehicle, power sports vehicle, or trailer has been transferred because of a prior retail sale.”

Section 3. Section 61-4-208, MCA, is amended to read:

“61-4-208. Prohibited acts – rights of franchisees. (1) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive;

(v) subject to subsection (2)(b) and notwithstanding the terms of a franchise agreement or other agreement providing otherwise, purchase goods or services from a vendor identified, selected, or designated by a manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or entities listed without allowing the franchisee, after consultation with the franchisor, to obtain goods or services of like kind, quality, and design from a vendor that the franchisee chooses;

(vi) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements. The reasonable facilities requirements may not include any requirement that a new motor vehicle dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

(vii) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

(viii) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, importer, or any representative of any of these persons or entities or do any other act unfair to the new motor vehicle dealer or transferee of a new motor vehicle dealer by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, importer, or any representative of any of these persons or entities and the new motor vehicle dealer or transferee of a new motor vehicle dealer; or

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or any representative or agent of any of these persons or entities;

(b) delay, refuse, or fail to deliver new motor vehicles in a reasonable time in a reasonable quantity relative to the new motor vehicle dealer's or transferee of a new motor vehicle dealer's facilities and sales potential after accepting an order from a new motor vehicle dealer or transferee of a new motor vehicle dealer if the new motor vehicles are publicly advertised as being available for immediate delivery;

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or transferee of a new motor vehicle dealer or franchise of a new motor vehicle dealer or transferee of a new motor vehicle dealer regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards; or

(d) notwithstanding the terms, provisions, or conditions of any agreement or franchise, use or consider the new motor vehicle dealer's or transferee of a new motor vehicle dealer's performance relating to the sale of new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of new motor vehicles, parts, or service contracts in determining:

(i) eligibility to purchase program, certified, or other used motor vehicles;

(ii) the volume, type, or model of program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase;

(iii) the price or prices of any program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase; or

(iv) the availability or amount of any discount, credit, rebate, or sales incentive that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to receive for the purchase of any program, certified, or other used motor vehicles.

(e) *enforce a right of first refusal to acquire the new motor vehicle dealer's assets or ownership by a manufacturer, distributor, or manufacturer's assignee or manufacturer's representative or to require a dealer to grant a right of option to a manufacturer, distributor, or manufacturer's representative.*

(2) (a) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, distributor branch, or importer is beyond the control of the listed persons or entities.

(b) (i) Subsection (1)(a)(v) does not apply to goods or services specifically eligible for reimbursement of over one-half the cost of the goods or services pursuant to a franchisor or distributor program or incentive granted to the franchisee on reasonable, written terms.

(ii) For the purposes of subsection (1)(a) and this subsection (2)(b), "goods" do not include:

(A) moveable displays, brochures, or promotional materials containing material subject to the intellectual property rights of a franchisor or parts to be used in repairs under warranty obligations of a franchisor; or

(B) special tools or training required by the franchisor.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 4. Repealer. The following section of the Montana Code Annotated is repealed:

61-4-141. Manufacturer's right of first refusal.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2017

CHAPTER NO. 94

[SB 129]

AN ACT REQUIRING INSURANCE COVERAGE FOR DENTAL SERVICES OFFERED BY TELEMEDICINE; AMENDING SECTION 33-22-138, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-138, MCA, is amended to read:

"33-22-138. Coverage for telemedicine services. (1) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that provides coverage for health care services must provide coverage for health care services provided by a health care provider or health care facility by means of telemedicine if the services are otherwise covered by the policy, certificate, contract, or agreement.

(2) Coverage under this section must be equivalent to the coverage for services that are provided in person by a health care provider or health care facility.

(3) Nothing in this section may be construed to require:

(a) a health insurance issuer to provide coverage for services that are not medically necessary, subject to the terms and conditions of the insured's policy; or

(b) a health care provider to be physically present with a patient at the site where the patient is located unless the health care provider who is providing health care services by means of telemedicine determines that the presence of a health care provider is necessary.

(4) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions. Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical services covered under the plan may not be imposed on the coverage for services provided by means of telemedicine.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, specified disease, or long-term care policies.

(6) For the purposes of this section, the following definitions apply:

(a) "Health care facility" means a critical access hospital, hospice, hospital, long-term care facility, mental health center, outpatient center for primary care, or outpatient center for surgical services licensed pursuant to Title 50, chapter 5.

(b) "Health care provider" means an individual:

(i) licensed pursuant to Title 37, chapter 3, 4, 6, 7, 10, 11, 15, 17, 20, 22, 23, 24, 25, or 35;

(ii) licensed pursuant to Title 37, chapter 8, to practice as a registered professional nurse or as an advanced practice registered nurse;

(iii) certified by the American board of genetic counseling as a genetic counselor; or

(iv) certified by the national certification board for diabetes educators as a diabetes educator.

(c) "Store-and-forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a later date by a health care provider or health care facility at a distant site without the patient present in real time. The term includes interactive audio, video, and data communication.

(d) (i) "Telemedicine" means the use of interactive audio, video, or other telecommunications technology that is:

(A) used by a health care provider or health care facility to deliver health care services at a site other than the site where the patient is located; and

(B) delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.

(ii) The term includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store-and-forward technology.

(iii) The term does not include the use of audio-only telephone, e-mail, or facsimile transmissions."

Section 2. Effective date. [This act] is effective January 1, 2018.

Approved March 23, 2017

CHAPTER NO. 95

[SB 142]

AN ACT REQUIRING CERTAIN LOCAL GOVERNMENTAL FIRE AGENCIES AND EMERGENCY SERVICE PROVIDERS TO NOTIFY THE AGENCIES' AND PROVIDERS' VOLUNTEERS IF WORKERS' COMPENSATION COVERAGE IS NOT PROVIDED; REQUIRING NOTIFICATION TO OCCUR

ON AN ANNUAL BASIS; AND AMENDING SECTIONS 7-33-4510, 7-34-103, AND 39-71-118, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-4510, MCA, is amended to read:

“7-33-4510. Workers’ compensation for volunteer firefighters – notification if coverage not provided – definitions. (1) An employer may provide workers’ compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter who is listed on a roster of service.

(2) An employer may purchase workers’ compensation coverage from any entity authorized to provide workers’ compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71.

(3) If an employer provides workers’ compensation coverage as provided in this section, the employer may, upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the clerk and recorder in the county in which the employer is located and update the roster of service monthly if necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original and replace it with updates whenever necessary. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.

(4) If an employer does not provide workers’ compensation coverage, the employer shall annually notify the employer’s volunteer firefighters that coverage is not provided.

~~(4)~~(5) For the purposes of this section, the following definitions apply:

(a) (i) “Employer” means the governing body of a fire agency organized under Title 7, chapter 33, including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a volunteer rural fire control crew.

(ii) The term does not mean a governing body of a city of the first class or second class, including a city to which 7-33-4109 applies, that provides workers’ compensation coverage to employees as defined in 39-71-118.

(b) “Roster of service” means the list of volunteer firefighters who have filled out a membership card prior to performing services as a volunteer firefighter.

(c) (i) “Volunteer firefighter” means a volunteer who is on the employer’s roster of service. A volunteer firefighter includes a volunteer emergency medical technician as defined in 50-6-202 who is on the roster of service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

(ii) The term does not mean an individual who is not listed on a roster of service or a member of a volunteer fire department provided for in 7-33-4109.”

Section 2. Section 7-34-103, MCA, is amended to read:

“7-34-103. Manner of providing ambulance service. (1) If a county, city, or town establishes or maintains ambulance service, ~~it may~~, acting through its governing board, *it*:

(a) *may* operate the ambulance service itself or contract for ambulance service;

(b) *may* buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

(c) *may* sell ambulance service insurance or contract with a third-party entity to sell ambulance service insurance to persons who use the ambulance service that covers the cost of the ambulance service that is not otherwise covered;

(d) *may* adopt rules and establish fees or charges for the furnishing of an ambulance service; *and*

(e) shall, if the service does not provide workers' compensation coverage, annually notify the service's volunteer emergency medical technicians that coverage is not provided.

(2) A county, city, or town that directly sells ambulance service insurance or that remains liable for the financial risk pursuant to insurance sold by a third party under contract with the county, city, or town is exempt from Title 33, except for the provisions provided in 33-18-201 and 33-18-242.”

Section 3. Section 39-71-118, MCA, is amended to read:

“39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined – election of coverage. (1) As used in this chapter, the term “employee” or “worker” means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) subject to subsection (11), a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-33-4510.

(4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting

full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

- (i) nonresident employees are hired in Montana;
- (ii) nonresident employees' wages are paid in Montana;
- (iii) nonresident employees are supervised in Montana; and
- (iv) business records are maintained in Montana.

(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection (8)(d).

(10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.

(b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency medical technician, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer emergency medical technicians under the provisions of this section shall annually notify its volunteer emergency medical technicians that coverage is not provided.

(e)(f) (i) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency medical technician who serves an employer as defined in 7-33-4510.

(f)(g) The term “volunteer hours” means the time spent by a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer’s premises.

(11) The definition of “employee” or “worker” in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.”

Approved March 23, 2017

CHAPTER NO. 96

[SB 228]

AN ACT REVISING DRUG PARAPHERNALIA LAWS; EXEMPTING CERTAIN PERSONS THAT PROVIDE NEEDLE AND SYRINGE EXCHANGE SERVICES FROM DRUG PARAPHERNALIA LAWS; AMENDING SECTION 45-10-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-10-107, MCA, is amended to read:

“45-10-107. Exemptions. Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice and persons in compliance with Title 50, chapter 46, are exempt from this part. *The provisions of this part do not apply to:*

(1) *practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice;*

(2) *persons acting in compliance with Title 50, chapter 46; or*

(3) *persons acting as employees or volunteers of an organization, including a nonprofit community-based organization, local health department, or tribal health department, that provides needle and syringe exchange services to prevent and reduce the transmission of communicable diseases.”*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2017

CHAPTER NO. 97

[SB 2]

AN ACT CLARIFYING REQUIREMENTS FOR MEETINGS OF BOARDS OF COUNTY COMMISSIONERS; PROVIDING THAT THE PRESENCE OF A QUORUM OF MEMBERS DOES NOT CONSTITUTE A MEETING IN CERTAIN SITUATIONS; AMENDING SECTION 7-5-2122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2122, MCA, is amended to read:

“7-5-2122. Meetings of board of county commissioners. (1) The governing body of the board of county commissioners of a county shall establish by resolution a regular meeting date and notify the public of that date.

(2) *Except as provided in subsection (3) or in the event of an emergency situation under 2-3-112 affecting the public health, welfare, or safety, all*

meetings must be held on the date designated in subsection (1) and at the county seat of the board's county.

~~(2)(3) The governing body of the county, except as may be otherwise required of them, may meet at the county seat of their respective counties at any time for the purpose of attending to county business. Commissioners The board may, by resolution and prior having provided at least 2 days' posted public notice; in accordance with 7-1-2123, designate another meeting time and or place.~~

(4) The presence of a quorum of members of the board at an event or meeting of another entity or organization or traveling in the same vehicle does not constitute a meeting of the board as long as no issues over which the commission has supervision, control, jurisdiction, or advisory power are discussed or heard. County business may only be conducted during a meeting as defined in 2-3-202 for which notice has been properly given.

(5) If a quorum of commissioners is present at an event or meeting or is traveling in the same vehicle when it was not possible to provide public notice under 7-1-2123, and issues over which the commission has supervision, control, jurisdiction, or advisory power are discussed or heard, the commissioners present shall provide a report at the commission's next regularly scheduled public meeting. The report must include the name of the event or meeting, the name of the persons involved, the date and location of the event or meeting, and a brief summary of the issues discussed or heard. If the commissioners' presence at the unnoticed meeting or event is reasonably expected to precipitate ensuing consideration of any issue by the board of county commissioners, details associated with the issue discussed or heard must also be included in the report."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2017

CHAPTER NO. 98

[SB 318]

AN ACT REVISING BOARD OF REALTY REGULATION BOARD MEMBERS' TERMS; AMENDING SECTION 2-15-1757, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Five members must be licensed real estate brokers, salespeople, or property managers who are actively engaged in the real estate business as a broker, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, a salesperson, or a property manager. The members must be residents of this state.

(3) The members shall serve staggered terms of 4 years. A member may not serve more than two *consecutive* terms or any portion of two *consecutive* terms.

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

Section 2. Effective date. [This act] is effective on passage and approval.
Approved March 27, 2017

CHAPTER NO. 99

[SB 229]

AN ACT REQUIRING THE RELEASE OR DISCLOSURE OF CHILD ABUSE OR NEGLECT RECORDS TO CERTAIN LAW ENFORCEMENT, PROSECUTORIAL, AND CHILD WELFARE ENTITIES AND INDIVIDUALS WHEN A CHILD HAS BEEN EXPOSED TO A DANGEROUS DRUG; AMENDING SECTION 41-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-205, MCA, is amended to read:

“41-3-205. Confidentiality – disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (8) and (9), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

(i) the attorney general;

(ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;

(iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or

(iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

(i) the death of the child as a result of child abuse or neglect;

(ii) a sexual offense, as defined in 46-23-502, against the child;

(iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(c) (i) *The department shall promptly disclose the results of an investigation to an individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:*

(A) *there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or*

(B) *a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.*

(ii) *For the purposes of this subsection (4)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.*

(5) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(6) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(7) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(8) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(9) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (8) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(10) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 2. Effective date. [This act] is effective July 1, 2017.

Approved March 27, 2017

CHAPTER NO. 100

[SB 182]

AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION TO INFORM THE PUBLIC REGARDING CERTAIN HIGHWAY CONSTRUCTION PROJECTS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH AND MAINTAIN LISTS OF GOVERNMENT ENTITIES AND ORGANIZATIONS LIKELY TO HAVE INTEREST IN OR BE IMPACTED BY A CONSTRUCTION PROJECT; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Construction projects -- project impacts -- notice. (1)

(a) After the commission has selected and prioritized a construction project under 60-2-110, the department or the commission shall determine whether the project will have a substantial impact on the public. If the department or the commission determines that the project will have a substantial impact, the department shall ensure that the public, in the area where the project is located and in areas adjacent to the project area, as provided in subsection (3)(a)(i), is notified of the project and is provided with periodic updates on the status of the project as provided in this section.

(b) A project with a substantial impact includes but is not limited to a project for which additional right-of-way is necessary for project completion.

(2) (a) The department shall engage the public through informational meetings or other appropriate means at major milestones in phases of the project, from the selection of the project by the commission to project completion. To engage and inform the public, the department shall:

(i) place and maintain current information regarding the status of the project in a prominent location on the department's website;

(ii) use newspaper, television, and radio formats as appropriate to provide information to the public regarding the status of the project;

(iii) investigate the use of other types of media, such as electronic social media, to provide information to the public regarding the status of the project; and

(iv) maintain an electronic notification list as provided in subsection (3).

(b) For the purposes of this section, phases of a project include but are not limited to survey, design, and right-of-way phases of a project.

(3) (a) For each proposed project identified under subsection (1), the department shall maintain a list of:

(i) all local government and tribal government entities within which the project will be located that are likely to be impacted by the project or that are adjacent to the project area; and

(ii) organizations and associations that represent motorists and commercial motor vehicle companies and operators that regularly conduct business in the project area and any other organizations or entities that represent travelers or those who regularly use highways in the project area for recreational or business purposes.

(b) The department shall notify the entities identified in subsection (3)(a) when the commission selects a construction project as provided in subsection (1) and shall provide project updates of major milestones in phases of the project through electronic communication to any entity that submits a request to receive updates.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2017.

Section 4. Applicability. [This act] applies to projects that are selected and prioritized under 60-2-110 on or after [the effective date of this act].

Approved March 27, 2017

CHAPTER NO. 101

[SB 165]

AN ACT AMENDING THE CONSUMER LOAN ACT TO REVISE THE LICENSEES THAT ARE EXEMPT FROM THE ACT; AMENDING SECTION 32-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-103, MCA, is amended to read:

“32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for interest, fees, other consideration, or expense, except as provided in and authorized by this chapter.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, other licensee, financial holding company, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a person exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain any principal, interest, fees, or other charges.

(5) The following are not required to comply with the provisions of this chapter:

(a) ~~a regulated lender, as defined in 31-1-111, to whom the exemption in 31-1-112 applies a bank, building and loan association, savings and loan association, trust company, or credit union; or~~

(b) a person who:

(i) makes fewer than four consumer loans a year with the person's own funds;

(ii) does not represent that the person is a licensee; and

(iii) complies with the provisions of Title 31, chapter 1, part 1."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2017

CHAPTER NO. 102

[SB 137]

AN ACT REVISING TAXPAYER DISPUTE RESOLUTION PROCEDURES; PROVIDING A TAXPAYER OPTION TO BYPASS THE DEPARTMENT OF REVENUE'S DISPUTE RESOLUTION OFFICE; REQUIRING INFORMAL DISCOVERY IN CERTAIN CASES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-211 AND 15-2-302, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform dispute review procedure -- notice -- appeal.

(1) The department shall provide a uniform dispute review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 25, or whether the employment relationship was that of an independent contractor. The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.

(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term "person" as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities. *When a case is transferred to the dispute resolution office, the parties shall attempt to attain the objectives of discovery through informal consultation or communication.*

Formal discovery procedures may not be utilized by a taxpayer or the department unless reasonable informal efforts to obtain the needed information have not been successful.

(c) *Once a case is transferred to the dispute resolution office, a person or entity may elect to bypass review by the dispute resolution office and receive a final department decision within 30 days of receiving the election.*

(e)(d) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties.

(e) If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising the person or entity of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) *the right to obtain a final department decision within 30 days of the date that the department receives an election to bypass review by the dispute resolution office;*

(d)(e) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e)(f) the right to request alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.”

Section 2. Section 15-2-302, MCA, is amended to read:

“15-2-302. Direct appeal from department decision to state tax appeal board – hearing. (1) (a) An appeal of a final decision of the department of revenue involving one of the matters provided for in subsection (1)(b) must be made to the state tax appeal board.

(b) Final decisions of the department for which appeals are provided in subsection (1)(a) are final decisions involving:

- (i) property centrally assessed under chapter 23;
- (ii) classification of property as new industrial property;
- (iii) any other tax, other than the property tax, imposed under this title; or
- (iv) any other matter in which the appeal is provided by law.

(2) A person may appeal the department’s annual assessment of an industrial property to the state board as provided in this section or to the county tax appeal board for the county in which the property is located as provided in Title 15, chapter 15, part 1.

(3) The appeal is made by filing a complaint with the state board within 30 days following receipt of notice of the department’s final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The state board shall immediately transmit a copy of the complaint to the department.

(4) The department shall file with the state board an answer within 30 days following filing of a complaint.

(5) The state board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act. *Parties to an appeal shall attempt to attain the objectives of discovery through informal consultation or communication before utilizing formal discovery procedures. Formal discovery procedures may not be utilized by a taxpayer or the department unless reasonable informal efforts to obtain the needed information have not been successful.*

(6) The decision of the state board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.”

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Applicability. [This act] applies to proceedings commenced on or after January 1, 2018.

Approved March 27, 2017

CHAPTER NO. 103

[SB 107]

AN ACT PROVIDING LIABILITY LIMITS FOR EMERGENCY CARE BY SEARCH AND RESCUE VOLUNTEERS; AMENDING SECTION 27-1-714, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-714, MCA, is amended to read:

“27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company, *any search and rescue volunteer*, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by the person in rendering the emergency care or assistance.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for the volunteer services does not exceed 25% of the person’s gross annual income or \$3,000 a calendar year, whichever is greater. *Reimbursement for search and rescue expenses is not compensation for purposes of this section.*

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, the refusal does not constitute gross negligence or a willful or wanton act or omission.”

Section 2. Applicability. [This act] applies to emergencies taking place on or after [the effective date of this act].

Approved March 27, 2017

CHAPTER NO. 104

[SB 67]

AN ACT GENERALLY REVISING LAWS RELATED TO OFFENDER INTERVENTION PROGRAMS; REQUIRING THE BOARD OF CRIME CONTROL TO ADOPT STATEWIDE STANDARDS TO ENSURE SERVICES OFFERED IN THE PROGRAMS ARE EVIDENCE-INFORMED; ALLOWING THE BOARD TO OFFER GRANT FUNDING TO COURTS TO DEVELOP AND IMPLEMENT THE STANDARDS; REQUIRING A PRELIMINARY ASSESSMENT AND COUNSELING PROVIDED TO AN OFFENDER CONVICTED OF PARTNER OR FAMILY MEMBER ASSAULT TO MEET THE PROGRAM STANDARDS; EXTENDING EXISTING BOARD RULEMAKING AUTHORITY; AND AMENDING SECTIONS 44-4-311 AND 45-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Counseling and services to be evidence-informed. (1) The Montana board of crime control shall adopt statewide offender intervention program standards to ensure that counseling and other services organized under the program are evidence-informed practices that are designed to reduce the risk of future violent behavior.

(2) The board and the head of the offender intervention program may consult with the department of corrections to develop evidence-informed programs and practices.

Section 2. Section 44-4-311, MCA, is amended to read:

“44-4-311. Domestic violence intervention program. (1) The Montana board of crime control shall use the money in the domestic violence intervention

account established by 44-4-310 to fund a domestic violence intervention program to provide grants to:

(a) communities for misdemeanor probation officers or compliance officers to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626; or

(b) a court to implement an offender intervention program that meets the standards adopted in [section 1].

(2) In administering the domestic violence intervention program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement 44-4-310 through 44-4-313.”

Section 3. Section 45-5-206, MCA, is amended to read:

“45-5-206. Partner or family member assault – penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) “Family member” means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) “Partners” means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor’s presence as a factor at the time of sentencing.

(b) For the purpose of determining the number of convictions under this section, a conviction means:

- (i) a conviction, as defined in 45-2-101, under this section;
- (ii) a conviction for domestic abuse under this section;
- (iii) a conviction for a violation of a statute similar to this section in another state;
- (iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under 45-5-202 or assault with a weapon under 45-5-213;
- (v) a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in this section, regardless of what the offense is named or whether it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202, 45-5-213, or this section; or
- (vi) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must *meet the standards established pursuant to [section 1] and be:*

- (i) with a person licensed under Title 37, chapter 17, 22, or 23;
- (ii) with a professional person as defined in 53-21-102; or
- (iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [section 1].

Approved March 27, 2017

CHAPTER NO. 105

[SB 6]

AN ACT REMOVING REDUNDANT LANGUAGE FROM THE STATUTE PROVIDING REIMBURSEMENT TO TRIBAL COLLEGES FOR SERVICES PROVIDED TO RESIDENT NONBENEFICIARY STUDENTS; AND AMENDING SECTION 20-25-428, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-428, MCA, is amended to read:

"20-25-428. Tribal college reimbursement for services provided to resident nonbeneficiary students. (1) Subject to a line item appropriation for purposes of this section, the regents shall provide a reimbursement to tribally controlled community colleges for enrolled resident nonbeneficiary students who, ~~except as provided in subsection (8),~~ are taking courses for which credit is transferable to another Montana college or university.

(2) Each tribal community college shall apply to the regents for this reimbursement. Except as provided in subsection (6), the money must be distributed on a prorated basis according to the eligible resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the system by the regents and, ~~except as provided in subsection (8),~~ must be enrolled in courses for which credit is transferable to another Montana college or university. The distribution for any resident nonbeneficiary student reimbursement must be limited to a maximum annual amount of \$3,280 for each full-time equivalent student.

(3) A reimbursement is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest commission on colleges and universities;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with information relating to eligibility of resident nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the system;

(c) providing the regents with documentation that credits for the courses in which the resident nonbeneficiary students are enrolled, ~~except as provided in subsection (8),~~ will be accepted at another Montana college or university; and

(d) filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(5) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall grant to eligible resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system.

(7) The calculation in subsection (6) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

~~(8) The limit of financial assistance to nonbeneficiary students is limited to students enrolled in courses for which credit is transferable to another Montana college or university.~~

(9)(8) As used in this section, "resident nonbeneficiary student" means a resident of the state of Montana who is not:

(a) a member of an Indian tribe; or

(b) a biological child of a member of an Indian tribe, living or deceased."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved March 27, 2017

CHAPTER NO. 106

[HB 271]

AN ACT ESTABLISHING THE MONTANA HONOR AND REMEMBER ACT FOR FAMILY MEMBERS OF MILITARY SERVICE MEMBERS WHO HAVE BEEN KILLED OR DECLARED MISSING IN ACTION; PROVIDING DEFINITIONS; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADMINISTER THE PROGRAM; ESTABLISHING ELIGIBILITY CRITERIA; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; PROVIDING FOR A TRANSITION FROM THE MONTANA AWARD FOR VALOROUS SERVICE AND A SUNSET DATE FOR THE AWARD; AMENDING SECTIONS 1-1-522 AND 17-7-502, MCA; REPEALING SECTION 1-1-522, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Montana Honor and Remember Act".

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Eligible service member" means a service member who meets the criteria established in [section 4(2)].

(2) “Family member” means the spouse of an eligible service member or a person who is a parent, child, brother, sister, or grandparent of an eligible service member by lineage, adoption, legal guardianship, or marriage.

(3) “United States armed forces” means the active and reserve components of the United States army, marine corps, navy, air force, and coast guard.

Section 3. Honor and remember medallion. There is an honor and remember medallion for family members of eligible service members. To the extent that funding is available for the purposes of [sections 1 through 7], the department shall administer the provisions of [sections 1 through 7] and provide for the design and production of the medallion and for its distribution, along with the joint resolution under [section 6], to eligible family members.

Section 4. Family member application – eligibility determination.

(1) A family member of an eligible service member may apply for the honor and remember medallion using a form and in a manner prescribed by the department, including providing the documentation requested by the department.

(2) (a) An eligible service member is a member of the United States armed forces who:

(i) was killed in action or classified by the United States as missing in action on or after September 8, 1939, while:

(A) engaged in an action against an enemy of the United States;

(B) serving with friendly foreign forces engaged in an armed conflict in which the United States was not a belligerent party against an opposing armed force; or

(C) engaged in military operations involving conflict with an opposing foreign force;

(ii) was serving on federal military active duty orders; and

(iii) was a legal resident of Montana at the time.

(b) The department shall determine how the criteria described in subsection (2)(a) is to be defined and documented for the purposes of [sections 1 through 7].

(3) Upon receipt of an application, the department shall determine whether the family member is eligible to receive the medallion and notify the family member of the determination.

Section 5. First and subsequent medallions – cost. (1) The first medallion and the first copy of the joint resolution under [section 6] provided to a family member of an eligible service member must be provided without cost to the family member.

(2) After the first medallion has been provided to a family member, additional family members of the eligible service member may, in a manner prescribed by the department, purchase additional medallions and copies of the joint resolution for an amount that may not exceed the actual cost to the department for providing the additional medallions and joint resolutions.

(3) A family member may receive only one medallion and resolution.

(4) Payments received pursuant to this section must be deposited to the account established in [section 7].

Section 6. Joint resolution – award provided. (1) During a regular legislative session, the department shall notify the president of the senate of the eligible service members for which a first medallion has been requested.

(2) The president of the senate shall request and introduce a joint resolution naming each eligible service member for which a first medallion has been requested. The resolution is exempt from any bill request limits established by legislative rule.

(3) If the joint resolution passes the legislature, the department shall send a copy of the signed joint resolution naming the eligible service member to the family member who has applied for and has been determined to be eligible to receive the medallion honoring and remembering that service member.

Section 7. Account established – statutory appropriation. (1) There is an account in the state special revenue fund provided for in 17-2-102 to the credit of the department.

(2) Gifts, grants, and donations provided for the purposes of [sections 1 through 7] and payments received under [section 5] must be deposited to this account.

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department and may be used only for the purposes of [sections 1 through 7].

Section 8. Section 1-1-522, MCA, is amended to read:

“1-1-522. Montana award of valorous service to honor Montana’s fallen heroes – administration by department of military affairs. (1) There is a Montana award of valorous service. The award is to honor members of the United States armed forces who were legal residents of the state of Montana or were stationed in or deployed from Montana and who were, on or after December 7, 1941, killed in the line of duty or were classified as missing in action while:

- (a) engaged in military operations against an enemy of the United States;
- (b) serving with a friendly foreign military force engaged in an armed conflict in which the United States is not a belligerent party; or
- (c) serving in a combat zone designated by presidential order.

(2) (a) The president of the senate shall request the drafting of and shall introduce during each regular legislative session a joint resolution naming each person to be a recipient of the Montana award of valorous service.

(b) If both houses of the legislature pass the joint resolution, the Montana award of valorous service must be presented by the governor, the president of the senate, and the speaker of the house of representatives to a surviving family member, as designated by the award recipient in the defense enrollment eligibility reporting system or by law, during a special joint floor session of the senate and the house of representatives. If the surviving family member of an award recipient cannot be present to accept the award, the award may be mailed to the surviving family member.

(3) (a) The department of military affairs shall administer the provisions of this section, determine award recipients, including the appropriate surviving family member, and coordinate with the surviving family members and representatives who will be accepting the awards on behalf of the recipients.

(b) Surviving family members or service organizations shall notify the department of military affairs if the surviving family member believes a deceased relative is eligible or if a service organization is aware of possible award recipients.

(4) For purposes of this section, “United States armed forces” means the regular and reserve components of the United States army, navy, air force, marine corps, coast guard, and the merchant marine.

(5) *A family member who is eligible to receive the valorous service award under this section and who has notified the department and requested the award but has not yet received the award must instead receive the honor and remember medallion and joint resolution provided for in [sections 1 through 7]. An eligible family member who has requested the award on or before [the effective date of this act] must receive the honor and remember medallion by August 1, 2017.”*

Section 9. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; [section 7]; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to

sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)”

Section 10. Repealer. The following section of the Montana Code Annotated is repealed:

1-1-522. Montana award of valorous service to honor Montana’s fallen heroes -- administration by department of military affairs.

Section 11. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 10, chapter 2, and the provisions of Title 10, chapter 2, apply to [sections 1 through 7].

Section 12. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 10] is effective January 1, 2018.

Approved March 27, 2017

CHAPTER NO. 107

[HB 95]

AN ACT REMOVING LIMITATIONS ON THE ESTABLISHMENT OF CHEMICAL DEPENDENCY TREATMENT FACILITIES AND PROGRAMS; AMENDING SECTIONS 53-24-204 AND 53-24-208, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-204, MCA, is amended to read:

“53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts; *and*

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-108 and 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to persons with a chemical dependency;

(f) establish criteria to be used for the development of new programs;

(g) ~~encourage~~ *provide* planning for the ~~greatest optimal~~ use of funds by ~~discouraging duplication of services; encouraging increasing~~ efficiency of services ~~through existing programs~~, *ensuring existing needs are met*, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(h) cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for intoxicated persons and persons with a chemical dependency in or on parole from penal institutions;

(i) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; ~~and~~

(j) *hold all state-approved facilities, programs, and providers to uniform standards as established by the department by rule; and*

~~(j)(k)~~ assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency.”

Section 2. Section 53-24-208, MCA, is amended to read:

“53-24-208. Facility standards. (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards must be adopted by rule and may concern the health standards to be met and standards for the approval of treatment programs for patients.

(2) Facilities applying for approval shall demonstrate that a local need currently exists for proposed services ~~and that the proposed services do not duplicate existing local services.~~

(3) The department shall periodically inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public or private treatment facility shall, on request, file with the department data, statistics, schedules, and information that the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns of the requested material must be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility that refuses to consent to inspection or examination by the department or that the department has reasonable cause to believe is operating in violation of this chapter.

(9) If a rehabilitation facility otherwise meets the ~~requirements of~~ *requirement in* subsection (2), the department may consider as eligible for approval during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department ~~may, but is not required to,~~ *shall* inspect a facility considered eligible for approval under this section to ensure compliance with state approval standards.”

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved March 27, 2017

CHAPTER NO. 108

[HB 102]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

“17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to February 13, 2015 [the effective date of this act].”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2017

CHAPTER NO. 109

[HB 211]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO REPORT SAGE GROUSE POPULATION DATA ON AN ANNUAL BASIS; AND AMENDING SECTION 87-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-201, MCA, is amended to read:

“87-1-201. Powers and duties. (1) Except as provided in subsection (11) (12), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection (11) (12), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state

treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) Except as provided in subsection ~~(11)~~ (12), the department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

(11) *The department shall report current sage grouse population numbers, including the number of leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality council, established in 5-16-101, on an annual basis. The report must include seasonal and historic population data available from the department or any other source.*

~~(11)~~(12) The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).”

Approved March 27, 2017

CHAPTER NO. 110

[HB 213]

AN ACT ALLOWING DISPLAY OF A SINGLE LICENSE PLATE ON CERTAIN MOTOR VEHICLES; PROVIDING FOR ISSUANCE OF A WAIVER OF THE REQUIREMENT THAT A FRONT LICENSE PLATE BE DISPLAYED AFTER AN INSPECTION AND PAYMENT OF AN INSPECTION FEE; REQUIRING THE CERTIFICATE OF WAIVER TO BE CARRIED IN THE MOTOR VEHICLE; REQUIRING MONEY COLLECTED FROM THE FEE TO BE DEPOSITED IN THE HIGHWAY SPECIAL REVENUE ACCOUNT; AND AMENDING SECTION 61-3-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-301, MCA, is amended to read:

“61-3-301. Registration – license plate required – display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer is properly registered and has the proper license plates conspicuously displayed on the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer. A license plate must be securely fastened to prevent it from swinging and may not be obstructed from plain view.

~~(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod. All other~~

(b) (i) *Except as provided in 61-4-120, 61-4-129, and subsections (1)(b)(ii) through (1)(b)(iv) of this section, all motor vehicles must have one license plate displayed on the front and one license plate displayed on the rear of the motor vehicle.*

(ii) *A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle.*

(iii) *A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod.*

(iv) *If a person is not able to comply with the requirement that a front license plate be displayed because of the body construction of the motor vehicle, the person may submit to the highway patrol an application for a waiver along with a \$25 inspection fee. A certificate of waiver may be issued upon inspection*

of the vehicle by a highway patrol officer. If a certificate of waiver is issued, the certificate must at all times be carried in the motor vehicle and must be displayed upon demand of a peace officer. Money collected from the inspection fee must be deposited in a highway revenue account in the state special revenue fund to the credit of the department of transportation.

(c) A person may not display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(d) A low-speed electric vehicle or a golf cart operated by a person with a low-speed restricted driver's license must have special license plates, as provided in 61-3-332(9), displayed on the front and rear of the vehicle.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the vehicle is domiciled or the county where the trailer, semitrailer, pole trailer, or travel trailer is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, pole trailer, or travel trailer on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute; or

(b) repaint old license plates to resemble current license plates.

(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front bumper and the rear bumper of a motor vehicle *that is subject to subsection (1)(b)(i) and is equipped with front and rear bumpers, except for a custom vehicle or street rod as provided in subsection (1)(b);* or

(b) a clearly visible location on the rear of a trailer, semitrailer, pole trailer, or travel trailer, *or motor vehicle that is subject to subsections (1)(b)(i) through (1)(b)(iv)."*

Approved March 27, 2017

CHAPTER NO. 111

[HB 214]

AN ACT REVISING LAWS RELATED TO THE PRODUCTION OF FISH AT THE FORT PECK HATCHERY; ELIMINATING THE REQUIREMENT TO USE WATER FROM THE DREDGE CUT; ELIMINATING THE LIMITATION ON THE PRODUCTION OF COLD WATER FISH; AMENDING SECTION 87-3-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-235, MCA, is amended to read:

"87-3-235. Fort Peck multispecies fish hatchery established. (1) There is a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm water fishing opportunities in Montana with minimal impact on cold water fish populations. Administration of the hatchery must be by the department, consistent with the department's authority provided for in 87-3-201.

(2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers. ~~It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to~~

~~Fort Peck dam.~~ Electric power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

(3) Propagation of warm water species, including but not limited to largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (*Sander vitreus*), sauger (*Sander canadensis*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), pallid sturgeon (*Scaphirhynchus albus*), paddlefish (*Polyodon spathula*), tiger muskellunge, other warm water species classified as species of special concern, threatened, or endangered, and bait fish, including cisco (*Coregonus artedii*), must be given priority over the propagation of any cold water species at the hatchery. To the greatest extent possible, the department shall maximize the production of warm water species at the hatchery. The propagation of cold water species may not displace or reduce the propagation of warm water species at the hatchery. ~~The department may not produce more than 750,000 cold water fish at the hatchery each year.~~

(4) Costs for hatchery operation, maintenance, and personnel are to be funded with revenue in the general license account or any federal funding available to the department.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2017

CHAPTER NO. 112

[HB 279]

AN ACT REVISING THE PERIOD OF TIME THAT MORTUARIES MUST KEEP THE UNCLAIMED REMAINS OF VETERANS; AND AMENDING SECTION 10-2-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-111, MCA, is amended to read:

“10-2-111. Disposal of unclaimed veterans’ remains – limits on liability of mortuaries and veterans’ service organizations – notice – definitions. (1) A mortuary is not liable for simple negligence in the disposition of the human remains or cremated remains of a veteran to a veterans’ service organization for the purposes of interment by that organization if:

~~(a) the remains have been in the possession of the mortuary for a period of at least 20 years, all or any part of which period may occur or may have occurred before or after October 1, 2001;~~

~~(b) the mortuary has given notice, as provided in subsection (2)(a) or (2)(b), to the veteran’s next of kin of the matters provided in subsection (3); and~~

~~(c) the remains have not been claimed by the next of kin of the veteran within the period of time provided for in subsection (3) following notice to the next of kin the mortuary complies with the provisions of this section.~~

(2) ~~In~~ *Except as provided in subsection (4)(b), in order for the immunity provided in subsection (1) to apply, a mortuary shall take the following action, alone or in conjunction with a veterans’ service organization, to provide notice to the next of kin of the deceased veteran:*

(a) give written notice by mail to the next of kin of the veteran for whom the address of the next of kin is known or can reasonably be ascertained by the mortuary giving the notice; or

(b) if the address of the next of kin is not known or cannot reasonably be ascertained, give notice to the next of kin by publication once each week for 3 successive weeks in a newspaper of general circulation:

(i) in the county of the veteran's residence; or

(ii) if the residence of the veteran is unknown, in the county in which the veteran died; or

(iii) if the county in which the veteran died is unknown, in the county in which the mortuary giving notice is located.

(3) The notice required by subsection (2) must include a statement to the effect that the remains of the veteran must be claimed by the veteran's next of kin within 30 days after the date of mailing of the written notice provided for in subsection (2)(a) or within 4 6 months of the date of the first publication of the notice provided for in subsection (2)(b), as applicable; notice under subsection (2) and that if the remains are not claimed *within that time*, the remains may be given to a veterans' service organization for interment.

(4) (a) *A mortuary must hold the unclaimed remains of a veteran for at least 6 months unless a nonprofit organization for veterans or a state or federal agency verifies in a writing provided to the mortuary that there are no surviving family members to claim the remains.*

(b) *If a nonprofit organization for veterans or a state or federal agency verifies in a writing provided to the mortuary that there are no surviving family members to claim the remains, the mortuary is not required to provide notice under subsection (2) and the mortuary is immediately covered by the protections in subsection (1).*

(c) *After retaining the unclaimed remains of a veteran for at least 6 months or after verification by a nonprofit organization for veterans or a state or federal agency that there are no surviving family members to claim the remains, the mortuary may release the remains to a veterans' service organization for interment.*

~~(4)~~(5) A veterans' service organization receiving human remains or cremated remains of a veteran from a mortuary for the purposes of interment is not liable for simple negligence in the custody or interment of the remains if the veterans' service organization interments and does not scatter the remains and does not know and has no reason to know that the remains do not satisfy the requirements of subsection (1)(a) or (1)(c) or that the mortuary has not complied with the notice requirements of subsection (2)(a) or (2)(b), as applicable.

~~(5)~~(6) By accepting the remains of a veteran for interment, a veterans' service organization does not agree to pay storage or other charges applied by the mortuary for the keeping or preservation of the remains.

~~(6)~~(7) A veterans' service organization accepting remains pursuant to this section shall take all reasonable steps to inter the remains in a veterans' cemetery. However, the organization is not liable for any additional expense for interment in a veterans' cemetery and interment in a veterans' cemetery is not a condition for immunity under this section.

~~(7)~~(8) (a) As used in this section, the following definitions apply:

(i) "Mortuary" includes a mortuary as defined in 37-19-101, a funeral home, a funeral director, a mortician, an undertaker, or an employee of any of the individuals or entities.

(ii) "Veterans' service organization" means an association or other entity organized for the benefit of veterans that has been recognized or chartered by the United States congress, including the disabled American veterans, veterans of foreign wars, the American legion, the legion of honor, and the Vietnam veterans of America. The term includes a member or employee of any of those associations or entities.

(b) Terms not defined in this subsection (7) (8) have the meaning given them in 37-19-101.”

Approved March 27, 2017

CHAPTER NO. 113

[SB 128]

AN ACT REVISING LAWS PERTAINING TO PARIMUTUEL NETWORK FUND DISTRIBUTION; INCREASING THE PARIMUTUEL TAKEOUT AMOUNT TO NOT MORE THAN 30%; ALLOWING THE BREAKAGE AND THE VALUE OF UNDERPAYMENTS RESULTING FROM UNCLAIMED WINNING TICKETS TO BE DISTRIBUTED BY THE BOARD OF HORSERACING FOR LIVE RACES AND OTHER APPROPRIATE PURPOSES; AMENDING SECTIONS 23-4-105, 23-4-302, AND 23-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-105, MCA, is amended to read:

“23-4-105. Authority of board. (1) The board shall license and regulate racing, match bronc rides, and wild horse rides and review race meets held in this state under this chapter. All percentages withheld from amounts wagered, amounts set aside pursuant to 23-4-202(4)(d), percentages collected pursuant to 23-4-204(3), percentages collected pursuant to 23-4-302(3) and (5)(b)(iii), and money collected pursuant to 23-4-304(1)(a) and (1)(b) must be deposited in a state special revenue account and are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), 23-4-302(3) and (5)(b)(iii), and 23-4-304(1)(a) and (1)(b) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently authorized in Montana, the board shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board shall consider both the economic and safety impacts on the existing racing and breeding industry.

(2) Funds retained by the board in a state special revenue fund pursuant to 23-4-302(1) and (4) are statutorily appropriated to the board as provided in 17-7-502 for the operation of a simulcast parimutuel network and for other purposes that the board considers appropriate for the good of the existing horseracing industry.”

Section 2. Section 23-4-302, MCA, is amended to read:

“23-4-302. Distribution of deposits – breakage. (1) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as “breakage”.

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all

other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as “breakage”.

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in a state special revenue account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) Source market fees from licensed advance deposit wagering hub operators must be deposited by the board in the board’s state special revenue account.

(b) The board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee’s percentage of the total annual on-track parimutuel handle during the previous live race season. Prior to the beginning of each year’s live race season, the correct percentage must be distributed by the board to each live race meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.

(c) Ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year must, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program.

(5) (a) The parimutuel network licensee conducting fantasy sports league wagering shall distribute all funds deposited in the pool to the winner of the parimutuel pool less the takeout amount of ~~26%~~ *not more than 30%* of the total deposits.

(b) The takeout amount must be distributed as follows:

(i) ~~15.3846% to the parimutuel facility licensee;~~

(ii) ~~23.0769% to the parimutuel network licensee as an administrative fee;~~

and

(iii) ~~61.5385% to the board’s special revenue account according to the yearly license agreement between the parimutuel facility licensee, the parimutuel network licensee, and the board.~~ No more than 10% of the amount collected under this subsection (5)(b)(iii) may be appropriated by the legislature for administration of this chapter. The remaining portion collected under this subsection (5)(b)(iii) must be deposited in a state special revenue account. The board shall then distribute this portion to live race purses and for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(c) The odd cents of all redistribution based on each dollar deposited that exceeds a sum equal to the next lowest multiple of 10, known as “breakage”, as well as unclaimed winning tickets from each parimutuel pool, must be distributed to ~~the parimutuel network licensee~~ *by the board to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.”*

Section 3. Section 23-4-304, MCA, is amended to read:

“23-4-304. Gross receipts – department’s percentage – collection and allocation. (1) (a) Each live race meet licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day’s parimutuel betting at each race meet. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department.

Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(c) The licensed parimutuel network conducting fantasy sports league wagering shall pay the funds distributed pursuant to 23-4-302(5)(b)(iii) to the department within 10 days after receipt of the money by the licensee.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through a state special revenue account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2017

CHAPTER NO. 114

[HB 20]

ANACTREPEALINGCERTAINRENEWABLEENERGYCREDITREPORTING REQUIREMENTS; ELIMINATING REQUIREMENTS THAT ENTITIES FILE RENEWABLE ENERGY CREDIT REPORTS WITH THE DEPARTMENT OF REVENUE AND THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; ELIMINATING PENALTIES FOR NOT FILING REPORTS; REPEALING SECTIONS 69-3-2009 AND 69-3-2010, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. The following sections of the Montana Code Annotated are repealed:

69-3-2009. Electrical generation facilities renewable energy credit reporting.

69-3-2010. Exceptions to report contents.

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to reports due on or after March 1, 2017.

Approved March 30, 2017

CHAPTER NO. 115

[HB 3]

AN ACT REVISING EXPENDITURES AND APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2017; AUTHORIZING THE BUDGET DIRECTOR TO MANDATE REDUCTIONS TO EXPENDITURES FOR THE FISCAL YEAR ENDING JUNE 30, 2017; REDUCING GENERAL FUND APPROPRIATIONS FOR FISCAL YEAR 2017; AMENDING SECTIONS 10-3-312 AND 76-13-150, MCA; AMENDING SECTION 2, CHAPTER 353, LAWS OF 2015, SECTION 3, CHAPTER 359, LAWS OF 2015, SECTION 22, CHAPTER 368, LAWS OF 2015, SECTION 1, CHAPTER 371, LAWS OF 2015, SECTION 4, CHAPTER 376, LAWS OF 2015, AND SECTION 3, CHAPTER 386, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2017. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Office of Public Instruction Base Aid	\$17,300,000	General Fund
Office of Commissioner of Higher Education STEM Scholarships	\$358,000	General Fund
Department of Corrections Secure Facilities	\$3,148,125	General Fund
Department of Commerce Coal Board Grants	\$1,945,617	State Special Revenue
Department of Fish, Wildlife, and Parks Fisheries Division	\$1,500,000	Federal Special Revenue
Department of Fish, Wildlife, and Parks Fisheries Division	\$200,000	General Fund
Department of Natural Resources and Conservation Conservation Resource Development Division	\$200,000	General Fund

Section 3. Recommendations to reduce expenditures. (1) Except as provided in subsection (4), the budget director, taking into account the criteria provided in subsection (2), shall mandate reductions to agency expenditures of at least \$10 million for the biennium ending June 30, 2017.

(2) Prior to mandating reductions, the budget director shall consider whether an agency program is mandatory or permissive and analyze the impact of the proposed reduction in spending on the purpose of the program.

Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(3) The budget director shall submit an itemized list of mandated reductions to the 65th legislature by March 22, 2017.

(4) The budget director may not mandate reductions in spending for the following:

- (a) payment of interest and principal on state debt;
- (b) the legislative branch;
- (c) the judicial branch;
- (d) the school BASE funding program, including special education; and
- (e) salaries of elected officials during their terms of office.

Section 4. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor – appropriation.

(1) Whenever a disaster or an emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared under 80-7-1013, is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed ~~\$16~~ \$4 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed \$500,000 during the biennium to meet the state's share of the individuals and households grant programs as provided in 42 U.S.C. 5174. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(4) At the end of each biennium, an amount equal to the unexpended and unencumbered balance of the ~~\$16~~ \$4 million statutory appropriation in subsection (1), minus any amount appropriated pursuant to 10-3-310 in the same biennium, must be transferred by the state treasurer from the state general fund to the fire suppression account provided for in 76-13-150."

Section 5. Section 76-13-150, MCA, is amended to read:

"76-13-150. Fire suppression account – fund transfer. (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) The legislature may transfer money from other funds to the account, and the money in the account is subject to legislative fund transfers.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) ~~Money~~ Except as provided in subsection (11), money in the account may be used only for the purpose of paying expenses for fire prevention, including fuel reduction and mitigation, forest restoration, grants for the purchase of fire suppression equipment for county cooperatives, and fire suppression costs.

(5) Interest earned on the balance of the account is retained in the account.

(6) Except as provided in subsections (7) and (8), by August 15 following the end of each fiscal year, an amount equal to the balance of unexpended and unencumbered general fund money appropriated in excess of 0.5% of the total general fund money appropriated for that fiscal year must be transferred by the state treasurer from the general fund to the fire suppression account. General

fund appropriations that continue from a fiscal year to the next fiscal year and any general fund appropriations made pursuant to 10-3-310 or 10-3-312 are excluded from the calculation.

(7) The provisions of subsection (6) do not apply in a fiscal year in which reductions required by 17-7-140 occur or if a transfer pursuant to subsection (6) would require reductions pursuant to 17-7-140.

(8) The fund balance in the account may not exceed \$100 million.

(9) Up to \$5 million each biennium may be used for the purpose of fuel reduction and mitigation and forest restoration.

(10) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department *or to the governor* for the purposes described in **subsection subsections (4) and (11)**.

(11) For the biennium beginning July 1, 2015, if a disaster or an emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared under 80-7-1013, is declared by the governor, the governor is authorized to expend from the fire fund an amount not to exceed \$5 million."

Section 6. Reductions to general fund appropriations for fiscal year 2017. The following general fund appropriations for fiscal year 2017, as enacted in House Bill No. 2 in Ch. 400, Laws of 2015, are reduced as follows:

SECTION A

LEGISLATIVE BRANCH

1. Legislative Committees & Activities from \$598,938 to \$459,938.
2. Fiscal Analysis & Review from \$1,983,594 to \$1,783,594.
3. Audit & Examination from \$2,440,363 to \$1,672,708.

DEPARTMENT OF REVENUE

1. Director's Office, Fiscal Note Overtime, from \$70,000 to \$0.
2. Director's Office, Server Replacements, from \$376,855 to \$0.

SECTION B

DEPARTMENT OF HEALTH & HUMAN SERVICES

1. Medicaid and Health Services Branch, Health Resources Division, from \$151,293,936 to \$146,293,936.

SECTION C

DEPARTMENT OF LIVESTOCK

1. Animal Health Division, Establish Budget, from \$837,418 to \$790,415.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

1. Centralized Services from \$4,106,524 to \$3,917,576.
2. Conservation and Resource Development Division, from \$1,729,316 to \$1,671,606.
3. Water Resources Division from \$9,390,051 to \$9,051,609.
4. Forestry and Trust Land Management from \$12,258,791 to \$11,843,891.

SECTION D

JUDICIAL BRANCH

1. Supreme Court Operations from \$11,442,783 to \$11,262,978.
2. Supreme Court Operations, Information Technology Staff, from \$205,938 to \$200,551.
3. Supreme Court Operations, Court Help Program, from \$295,000 to \$286,092.
4. Supreme Court Operations, JDIP Administration, from \$5,068,622 to \$5,061,415.
5. Law Library from \$946,763 to \$934,190.
6. District Court Operations from \$28,226,316 to \$27,468,173.
7. Water Courts Supervision from \$1,098,666 to \$1,070,689.

CRIME CONTROL DIVISION

1. Justice System Support Service from \$2,465,858 to \$2,365,858.

DEPARTMENT OF JUSTICE

1. Motor Vehicle Division from \$9,174,900 to \$8,735,900.
2. Division of Criminal Investigation from \$7,434,929 to \$7,365,429.
3. Public Safety Officers Standards and Training from \$348,253 to \$331,004.
4. Central Services Division from \$905,781 to \$877,228.
5. Information Technology Services from \$4,622,500 to \$4,452,500.

SECTION E**OFFICE OF PUBLIC INSTRUCTION**

1. State Level Activities from \$10,893,741 to \$10,593,741.

COMMISSIONER OF HIGHER EDUCATION

1. Administration Program, Research Initiative, from \$7,500,000 to \$7,420,395.
2. Student Assistance Program, Governor's Best and Brightest Scholarship, from \$1,000,000 to \$979,605.

Section 7. Section 2, Chapter 353, Laws of 2015, is amended to read:

"Section 2. Appropriation. There is appropriated ~~\$20,170~~ *\$5,422* from the general fund to the legislative services division for the biennium beginning July 1, 2015, to support the commission provided for in [section 1]."

Section 8. Section 3, Chapter 359, Laws of 2015, is amended to read:

"Section 3. Appropriation. There is appropriated from the general fund to the legislative services division for the biennium beginning July 1, 2015, ~~\$55,000~~ *\$50,425* for the purposes of convening the commission under [section 1]. It is intended that the commission hold one 1-week meeting in each year of the biennium."

Section 9. Section 22, Chapter 368, Laws of 2015, is amended to read:

"Section 22. Appropriations. (1) There is appropriated from the state general fund for the biennium beginning July 1, 2015, the following:

(a) \$1,761,476 to the department of labor and industry for the purposes of [sections 14 through 17]; and

(b) ~~\$393,213~~ *\$298,056* to the department of revenue for the purposes of [section 18].

(2) These appropriations are to be considered base funding for the preparation of the 2019 biennium budget."

Section 10. Section 1, Chapter 371, Laws of 2015, is amended to read:

"Section 1. Appropriation. (1) For the biennium beginning July 1, 2015, there is appropriated ~~\$1 million~~ *\$1* from the general fund to the department of justice for litigation to improve and protect the state's access to and growth in domestic and international markets for its products and natural resources including energy and other major litigation. ~~At least \$200,000 of these funds~~ *Funds* may be expended only for actions that the attorney general determines will likely establish, benefit, improve, or protect the state's access to domestic or international markets and may be used at the discretion of the attorney general to cover the costs and fees of those actions, including evaluating, commencing, or participating in legal actions or proceedings in state and federal courts or administrative proceedings.

(2) Any funds not expended or encumbered in the biennium must revert to the general fund.

(3) The department of justice will report to the legislative finance committee prior to the end of each fiscal year on any amounts expended or encumbered in that fiscal year for the purposes described in subsection (1)."

Section 11. Section 4, Chapter 376, Laws of 2015, is amended to read:

"Section 4. Appropriation. There is appropriated ~~\$300,000~~ *\$100,000* from the state general fund to the office of the court administrator for the

biennium beginning July 1, 2015, for the purpose of administering the child abuse court diversion pilot project described in [section 1].”

Section 12. Section 3, Chapter 386, Laws of 2015, is amended to read:

“**Section 3. Appropriation.** There is appropriated ~~\$24,000~~ *\$19,534* from the general fund to the legislative services division for the biennium beginning July 1, 2015, to support the activities of the task force established in [section 1].”

Section 13. Effective date. [This act] is effective on passage and approval.

Section 14. Termination. [Sections 4 and 5] terminate June 30, 2017.

Approved March 30, 2017

CHAPTER NO. 116

[HB 38]

AN ACT INCREASING THE AMOUNT OF TIMBER THAT MAY BE HARVESTED ON INACCESSIBLE STATE LANDS WHEN AN ADJOINING LANDOWNER GRANTS ACCESS TO ONLY ONE POTENTIAL BUYER; AMENDING SECTION 77-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-201, MCA, is amended to read:

“**77-5-201. Sale of timber.** (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in 77-5-214 through 77-5-219.

(2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency because of fire, insect, fungus, parasite, or blowdown or to address forest health concerns or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of \pm 2 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3).”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2017

CHAPTER NO. 117

[HB 65]

AN ACT CLARIFYING THE DUTIES OF THE OFFICE OF APPELLATE DEFENDER AND THE CHIEF APPELLATE DEFENDER; AMENDING SECTION 47-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 47-1-205, MCA, is amended to read:

“47-1-205. Office of appellate defender – chief appellate defender.

(1) There is an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) (a) The commission shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender. The chief appellate defender is appointed by and serves at the pleasure of the commission. The commission shall establish compensation for the position commensurate with the position’s duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The chief appellate defender must be an attorney licensed to practice law in the state.

(c) The position of chief appellate defender is exempt from the state classification and pay plan as provided in 2-18-103.

(3) The chief appellate defender shall:

(a) direct, manage, and supervise all public defender services provided by the office of appellate defender, including budgeting, reporting, and related functions;

(b) ensure that when a court orders the office of appellate defender to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202(1)(f) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

(e) contract for services as provided in 47-1-216 and as authorized by the commission according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the office of appellate defender and submit records and reports to the commission as requested through the office of state public defender;

(g) implement standards and procedures established by the commission for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the commission;

(i) ~~confer with the chief public defender on budgetary issues and submit budgetary requests and the reports required by law or by the governor through the chief public defender;~~ and

(j) perform all other duties assigned to the chief appellate defender by the commission.”

Section 2. Coordination instruction. If House Bill No. 77 is passed and approved, then [this act] is void.

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved March 30, 2017

CHAPTER NO. 118

[HB 124]

AN ACT REQUIRING TRAINING FOR WATER COMMISSIONERS; AND AMENDING SECTION 85-5-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-111, MCA, is amended to read:

“85-5-111. Water commissioner and mediator education. (1) The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

(1)(a) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

(2)(b) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(3)(c) an outreach program that identifies persons who might serve as water commissioners or mediators.

(2) *Unless a district court judge having jurisdiction determines otherwise, a water commissioner appointed pursuant to 85-5-101 shall complete at least one educational program as provided in subsection (1) prior to administering water.”*

Approved March 30, 2017

CHAPTER NO. 119

[HB 345]

AN ACT REVISING THE DEFINITION OF “LIVESTOCK” FOR PURPOSES OF THE PER CAPITA FEE ON LIVESTOCK; PROVIDING THAT HONEY BEES ARE INCLUDED IN THE DEFINITION OF “LIVESTOCK”; AND AMENDING SECTION 15-24-921, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-921, MCA, is amended to read:

“15-24-921. Per capita fee to pay expenses of enforcing livestock laws. (1) A per capita fee is authorized and directed to be imposed by the department on all poultry and *honey* bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state. The fee is in addition to appropriations and is to help pay the salaries and all expenses connected with the enforcement of the livestock laws of the state and bounties on wild animals as provided in 81-7-104.

(2) The per capita fee is due on May 31 of each year. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

(3) As used in this section, “livestock” means cattle, sheep, swine, poultry, *honey* bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, ostriches, rheas, emus, and domestic ungulates.”

Approved March 30, 2017

CHAPTER NO. 120

[HB 338]

AN ACT REVISING BRANDING AND LAND OWNERSHIP REQUIREMENTS FOR LIVESTOCK TRANSPORTATION PERMITS; AND AMENDING SECTIONS 81-3-203 AND 81-3-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-203, MCA, is amended to read:

“81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the authorized agent of the owner of livestock, shall inspect livestock that are intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection for the livestock if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock.

(2) The inspection must include an examination of the livestock and all marks and brands on the livestock to identify ownership of the livestock. The certificate of inspection must be made in triplicate and must specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, on the animal, and any other information on the certificate that the department may require. One copy of the certificate must be retained by the inspector, one copy must be furnished by the inspector to the owner or shipper of the livestock, and one copy must be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock, the state stock inspectors or deputy state stock inspectors, upon application of an owner or the owner’s agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit must be made in triplicate and must specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different from the owner, the kind of livestock, the marks and brands, if any, on the livestock, a description of the vehicle or vehicles to be used to transport the livestock, including the license number of the vehicles, and any other information on the permit that the department may require. A permit issued is good for shipment within 36 hours from the date and time of issue. However, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit must be retained by the inspector, one copy must be filed by the inspector with the department within 5 days of the date of issue, and one copy must be furnished by the inspector to the owner or shipper of the livestock. The owner’s or shipper’s copy of the permit must accompany the shipment and be delivered to the state

stock inspector at the livestock market or shipping point where the livestock are delivered.

(4) Upon application of an owner or the owner's agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to possess the livestock, a state stock inspector shall issue a transportation permit that will allow the movement of the livestock ~~into an adjoining county to land owned or controlled by the owner or the owner's agent~~ for purposes of grazing. The transportation permit must state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in *and subject to* 81-3-211(6)(e). A state stock inspector may enter the premises where livestock have been transported and inspect any livestock moved under the transportation permit or any livestock commingled with the transported livestock.

(5) A person transporting strays or livestock not lawfully under that person's control is guilty of a misdemeanor and is punishable as provided in 81-3-231."

Section 2. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county -- transportation permits. (1) For the purposes of this section:

(a) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members are all members of the same family; or

(iv) any other entity owned solely by members of the same family.

(b) "Members of the same family" means a group whose membership is determined by including an individual, the individual's spouse, and the individual's parents, children, *and* grandchildren, and the spouses of each.

(c) "Rodeo producer" means a person who produces or furnishes livestock that are used for rodeo purposes.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or a purchaser's agent to take possession of any livestock subject to title passing upon meeting or satisfaction of any conditions, unless the livestock have been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of the change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which livestock have not been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

(c) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock have been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock have been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection permits the movement of the released livestock directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, when inspection is required by this section, when a change of ownership has occurred, or when moved under a market consignment permit or a market release certificate, must have in the person's possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 must be extended to livestock transported or sold under the permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for the owner's personal use or business or if cattle are being transported from county to county in this state by their owner for show purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cattle described in the certificate. The permit becomes void upon any transfer of ownership or if the horse or cattle are to be removed from the state. If the permit is void, an inspection must be secured for removal and the endorsed certificate must be surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. The horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each horse. The application must contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each horse, and the permit is valid for the life of the horse. If there is a change in ownership of a horse, the permit automatically is void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. A permit is automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes and there is no change of ownership,

the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described in the certificate. The certificate is effective for the calendar year for which it is issued. The certificate must be issued by a state stock inspector.

(d) The owner of a bull bearing the registered brand of a bona fide rodeo producer may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the bull until there is a change of ownership. The bull must have a registered brand that has been legally cleared and a legible number brand on the shoulder or hip used for individual identification, or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each bull. The application must contain a thorough physical description of the bull and list all brands and tattoos carried by the bull. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each bull, and the permit is valid for the life of the bull. If there is a change in ownership of a bull, the permit automatically is void. The permit must accompany the bull for which it was issued at all times while the bull is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a rodeo bull subsequently entering the state. A permit is automatically void upon a change of ownership.

(e) (i) An owner of livestock or the owner's agent may be issued one transportation permit in a 12-month period allowing the movement of the livestock ~~into an adjoining county~~ and return when the livestock are being moved for grazing purposes ~~and when they are being moved to and from land owned or controlled by the owner of the livestock or the owner's agent. and when they are being moved to and from land owned or controlled by the owner of the livestock or the owner's agent:~~

(A) *into an adjoining county; or*

(B) *across multiple county lines if the entire grazing range is the privately deeded property of the livestock owner.*

(ii) The permit is valid for a period of 8 months from the date of issuance and must be issued by a state stock inspector. ~~The permit may be issued only if the livestock are branded with the permittee's brand, which must be registered in Montana.~~

(iii) *The permit may be issued only if the livestock are branded with the permittee's brand, which must be registered in Montana, unless the animal is classified as a virgin breeding female or a nursing calf.*

(iv) The department shall establish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

CHAPTER NO. 121

[HB 337]

AN ACT PROVIDING FOR A REVIEW OF STATE WATER RESERVATIONS AND A SUMMARY OF THE REVIEW TO BE PROVIDED TO THE WATER POLICY INTERIM COMMITTEE BY SEPTEMBER 15, 2026; AND AMENDING SECTION 85-2-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-316, MCA, is amended to read:

“85-2-316. State reservation of waters. (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) (a) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete based on the provisions applicable to issuance of a state water reservation. The rules must be adopted in compliance with Title 2, chapter 4.

(b) An applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under this subsection (3) that are in effect at the time the application is submitted. The department shall proceed in accordance with 85-2-302 with regard to any defects in the application.

(c) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(d) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental analysis must be paid

by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) Except as provided in 85-20-1401, the department shall issue a state water reservation if the applicant establishes to the department by a preponderance of evidence:

- (i) the purpose of the reservation;
- (ii) the need for the reservation;
- (iii) the amount of water necessary for the purpose of the reservation;
- (iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department shall issue a water reservation for withdrawal and transport for use outside the state if the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) (a) Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete.

(b) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams are not subject to the limit under this subsection (6)(b).

(7) A state water reservation issued under this section has a priority of appropriation dating from the filing of a correct and complete application with the department.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering

technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) A state water reservation issued under this section may not adversely affect any rights in existence at that time. The department may issue a state water reservation subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria of this section.

(10) (a) Except for a reservation provided in subsection (6) or a reservation provided in 85-20-1401, the department shall, at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met.

~~(b) An existing state water reservation subject to the review in subsection (10)(a) that was not reviewed in the 10 years prior to April 23, 2015, must be reviewed by July 1, 2016. The department shall provide the water policy interim committee, established in 5-5-231, a summary of the reviews before September 15, 2016 2026.~~

(c) Following a review pursuant to this subsection (10), at the request of the entity holding a water reservation or when the objectives of a state water reservation are not being met, the department may:

- (i) extend the time period to complete the appropriation of water;
- (ii) modify the reservation; or
- (iii) revoke the reservation.

(d) Any undeveloped water made available as a result of a revocation or modification under this subsection (10) is available for appropriation by others pursuant to this part.

(11) Except as provided in 85-20-1401, the department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require

the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ownership update form with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141.”

Approved March 30, 2017

CHAPTER NO. 122

[HB 307]

AN ACT AUTHORIZING A STATUTORY APPROPRIATION FOR THE RADIOACTIVE WASTE TRANSPORTATION MONITORING, EMERGENCY RESPONSE, AND TRAINING ACCOUNT; AMENDING SECTIONS 10-3-1304 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-1304, MCA, is amended to read:

“10-3-1304. Radioactive waste transportation monitoring, emergency response, and training account – purpose – disbursement.

(1) There is an account in the state special revenue fund to be known as the radioactive waste transportation monitoring, emergency response, and training account administered by the disaster and emergency services division of the department of military affairs.

(2) The money deposited into this account by the department of transportation pursuant to 10-3-1307 may be used only for the following purposes:

(a) to reimburse the highway patrol for expenses incurred in monitoring or providing escorts for motor carriers transporting high-level radioactive waste or transuranic waste through the state;

(b) to provide funding for training local emergency response personnel in handling radioactive waste accidents, spills, and other related emergencies; and

(c) to reimburse local emergency response entities for costs incurred in the event that an accident, spill, or other related emergency occurs.

(3) *Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of military affairs for the purposes described in subsection (2)."*

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-1304; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July

1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.”

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Termination. [This act] terminates September 30, 2025.

Approved March 30, 2017

CHAPTER NO. 123

[SB 8]

AN ACT REVISING INTERIM COMMITTEE DUTIES TO MAKE PERMISSIVE THE CURRENT MANDATORY REVIEW OF ADVISORY COUNCILS AND REQUIRED REPORTS; AMENDING SECTION 5-5-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-215, MCA, is amended to read:

“5-5-215. Duties of interim committees. (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
 - (b) subject to 5-5-217(3), conduct interim studies as assigned;
 - (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
 - (i) identification of issues likely to require future legislative attention;
 - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - (iii) experiences of the state’s citizens with the operation of an agency that may be amenable to improvement through legislative action;
 - (d) review, *if requested by any member of the interim committee, the* statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;
 - (e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
 - (f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.
- (2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.
- (3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2017

CHAPTER NO. 124

[HB 509]

AN ACT ESTABLISHING THE DAVID L. BRIESE JR. MEMORIAL HIGHWAY IN YELLOWSTONE COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, David L. Briese Jr. was killed in the line of duty on November 3, 2006, when responding to another deputy's call for assistance with a combative suspect; and

WHEREAS, David L. Briese Jr. dedicated his life to public safety as he served the people of Montana; and

WHEREAS, David L. Briese Jr., whose call number was 3-42, served for 11 years as a detention officer and as a deputy in the Yellowstone County and Big Horn County Sheriff's Offices; and

WHEREAS, David L. Briese Jr. gave the ultimate sacrifice while serving the citizens of Yellowstone County; and

WHEREAS, David L. Briese Jr. left behind two sons, a stepdaughter, a wife, two parents, and a sister; and

WHEREAS, Interstate 90 between mile 445 and mile 451 runs near the Yellowstone County Detention Facility, where David L. Briese Jr. started his career with Yellowstone County and where he lost his life; and

WHEREAS, the 65th Legislature of the State of Montana wishes to honor his memory and commitment to service.

Be it enacted by the Legislature of the State of Montana:

Section 1. David L. Briese Jr. memorial highway. (1) There is established the David L. Briese Jr. memorial highway on the existing Montana interstate 90 between mile 445 and mile 451.

(2) The department shall design and install appropriate signs marking the location of the David L. Briese Jr. memorial highway.

(3) Maps that identify roadways in Montana must be updated to include the location of the David L. Briese Jr. memorial highway when the department updates and publishes the state maps.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2017

CHAPTER NO. 125

[HB 471]

AN ACT ALLOWING A DRIVER TO EXCEED A SPEED LIMIT WHEN IN A PASSING ZONE; AND AMENDING SECTION 61-8-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, and 61-8-312, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 80 miles an hour at all times and the speed limit for

vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime;

(c) in an urban district is 25 miles an hour.

(2) A vehicle subject to the speed limits imposed in subsection (1) ~~traveling on a two-lane road~~ may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane *under the following circumstances:*

(a) *while traveling on a two-lane road; and*

(b) *in a designated passing zone.*

(3) Subject to the maximum speed limits set forth in subsection (1), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(4) Except when a special hazard exists that requires lower speed for compliance with subsection (3), the limits specified in this section are the maximum lawful speeds allowed.

(5) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(6) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314."

Approved March 30, 2017

CHAPTER NO. 126

[SB 28]

AN ACT GENERALLY REVISING WATER LAWS REGARDING JUDICIAL REVIEW OF WATER RIGHTS; AUTHORIZING THE WATER COURT TO REVIEW CERTAIN DECISIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RELATING TO APPLICATIONS FOR WATER RIGHT PERMITS AND CHANGES TO WATER RIGHT PERMITS; EXPANDING JURISDICTION OF THE WATER COURT; CLARIFYING DUTIES OF THE CHIEF WATER JUDGE AND ASSOCIATE WATER JUDGE; AMENDING SECTIONS 2-4-702, 3-7-223, 3-7-224, AND 3-7-225, MCA; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised

before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and ~~subsection (2)(c) subsections (2)(c) and (2)(e)~~ of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) *A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).*

(ii) *If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.*

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record."

Section 2. Section 3-7-223, MCA, is amended to read:

"3-7-223. Duties of chief water judge. The chief water judge shall:

(1) administer the adjudication of existing water rights by:

(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to ~~assure~~ *ensure* that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

(b) ~~assuring~~ *ensuring* that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree; *and*

(c) ~~assuring~~ *ensuring* that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) *conduct proceedings for petitions for judicial review filed with the water court under 2-4-702;*

~~(3)~~(4) assign court personnel to divisions and duties as needed;

~~(4)~~(5) assign the associate water judge to divisions and cases as needed; and

~~(5)~~(6) request and secure the transfer of water judges between divisions as needed.”

Section 3. Section 3-7-224, MCA, is amended to read:

“3-7-224. Jurisdiction of chief water judge and associate water judge. (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309, ~~and~~ all matters relating to the determination of existing water rights within the boundaries of the state of Montana, *and all petitions for judicial review filed with the water court under 2-4-702.*

(3) With regard to the consideration of a matter within the chief water judge’s jurisdiction, the chief water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge’s own motion, that may reasonably be required to allow the judge to fulfill the judge’s responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2).”

Section 4. Section 3-7-225, MCA, is amended to read:

“3-7-225. Duties of associate water judge. The duties of the associate water judge are the same as those assigned to the chief water judge pursuant to 3-7-223(1) ~~and (2) through (3).~~”

Section 5. Applicability. [This act] applies to final decisions on an application for a permit or change in appropriation right issued after October 1, 2017.

Section 6. Termination. (1) [This act] terminates September 30, 2025.

(2) Petitions filed on or before September 30, 2025, may proceed after the termination of [this act] and are not affected by this section.

Approved March 31, 2017

CHAPTER NO. 127

[SB 62]

AN ACT PROVIDING FOR CERTIFICATION AND REGULATION OF BEHAVIORAL HEALTH PEER SUPPORT SPECIALISTS; ESTABLISHING

CERTIFICATION REQUIREMENTS; AND PROVIDING RULEMAKING AUTHORITY TO THE BOARD OF BEHAVIORAL HEALTH.

Be it enacted by the Legislature of the State of Montana:

Section 1. Behavioral health peer support specialist. The profession of behavioral health peer support specialist is subject to certification requirements set forth in this chapter and by rules promulgated by the board of behavioral health.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Behavioral health" includes a person with a diagnosis of:
 (a) a mental disorder, as that term is defined in 53-21-102; or
 (b) chemical dependency, as that term is defined in 53-24-103.
 (2) "Behavioral health peer support" means the use of a peer support specialist's personal experience with a behavioral health disorder to provide support, mentoring, guidance, and advocacy and to offer hope to individuals with behavioral health disorders.

(3) "Board" means the board of behavioral health established under 2-15-1744.

(4) "Certified behavioral health peer support specialist" means a person who:

- (a) has experienced and is in recovery from a behavioral health disorder;
 - (b) has obtained the education and skills needed to provide therapeutic support to individuals with behavioral health disorders; and
 - (c) possesses a valid and current certification.
- (5) "Mental health professional" means:
- (a) a physician licensed under Title 37, chapter 3;
 - (b) a psychologist licensed under Title 37, chapter 17;
 - (c) a social worker licensed under Title 37, chapter 22;
 - (d) a professional counselor licensed under Title 37, chapter 23;
 - (e) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;
 - (f) a marriage and family therapist licensed under Title 37, chapter 37; or
 - (g) a licensed addiction counselor licensed under Title 37, chapter 35.

Section 3. Certification required – exceptions. (1) Upon certification in accordance with this chapter, a person may use the title "certified behavioral health peer support specialist" or "behavioral health peer support specialist".

(2) Subsection (1) does not prohibit a qualified member of another profession, such as a physician, lawyer, psychologist, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, clinical social worker licensed pursuant to Title 37, chapter 22, clinical professional counselor licensed pursuant to Title 37, chapter 23, addiction counselor licensed pursuant to Title 37, chapter 35, or marriage and family therapist licensed pursuant to Title 37, chapter 37, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession.

(3) Subsection (1) does not prohibit a qualified member of another profession, business, educational program, or volunteer organization who is not licensed or certified or for whom there is no applicable code of ethics, including peer mentors, advocates, and coaches, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of behavioral health peer support.

Section 4. Certificate requirements – supervision – fees. (1) A person may apply for certification as a behavioral health peer support specialist if the person has attested to the fact that the person:

(a) has been diagnosed by a mental health professional as having a behavioral health disorder;

(b) has received treatment; and

(c) is in recovery, as defined by the board by rule, from a behavioral health disorder.

(2) An applicant shall submit a written application on a form provided by the board and an application fee prescribed by the board. A person must be recertified annually using a process specified by the board by rule, including payment of a fee prescribed by the board.

(3) An applicant must have:

(a) successfully completed a training course in behavioral health peer support, as defined by the board by rule, which must include a module in ethics; and

(b) verified the applicant's ability to perform all essential functions of the certified peer support role through the application and certification process provided for by the board.

(4) As a prerequisite to the issuance of a certificate, the board shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(5) Pursuant to 37-1-203, an applicant who has a history of criminal convictions has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust. The board may deny the license if it determines that the applicant is not sufficiently rehabilitated.

(6) Supervision of a certified behavioral health peer support specialist must be provided by a competent mental health professional. The amount, duration, and scope of supervision may vary depending on the demonstrated competency and experience of the peer support specialist, as well as the service mix. Supervision may range from direct oversight to periodic care consultation. The board may create guidelines for supervision but must allow for flexibility in the provision of peer support services.

(7) In selecting approved training courses as required in subsection (3), the board shall provide as much flexibility and inclusivity as possible to applicants. The board shall review existing training materials from national, regional, and state agencies and organizations, including existing Montana-based peer support providers, that adequately address the essential functions of the certified peer support role and shall include those materials as possible. The board may not exclude a training course from the list of approved courses solely because the training course was created by or is provided by a faith-based or culturally based entity, association, tribe, church, or educational institution.

Section 5. Privileged communications – exceptions. (1) Certified behavioral health peer support specialists work in health care teams. Communication among team members that is essential for the supported individual's recovery must be defined and established by board rule.

(2) A certified behavioral health peer support specialist may not disclose any information the peer support specialist acquires from an individual to whom the peer support specialist provides behavioral health peer support except:

(a) with the written consent of the individual or, in the case of the individual's death or mental incapacity, with the written consent of the individual's personal representative or guardian;

(b) when a communication that otherwise would be confidential reveals that the individual or another person is contemplating the commission of a crime or in the behavioral health peer support specialist's professional opinion reveals a threat of imminent harm to the individual or others;

(c) that if the individual is a minor and information acquired by the certified behavioral health peer support specialist indicates that the minor was the victim of a crime, the peer support specialist may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of that crime is the subject of inquiry;

(d) that if the individual or the individual's personal representative or guardian brings an action against a certified behavioral health peer support specialist for a claim arising out of the peer support specialist's professional relationship with the individual, the individual is considered to have waived any privilege;

(e) to the extent that the privilege is otherwise waived by the individual; and

(f) as may otherwise be required by law.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 5].

Approved March 31, 2017

CHAPTER NO. 128

[SB 91]

AN ACT CLARIFYING WHAT CONSTITUTES UNLAWFUL USE OF A VEHICLE WHILE HUNTING; AND AMENDING SECTIONS 87-6-403 AND 87-6-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-6-403, MCA, is amended to read:

"87-6-403. Unlawful hunting from public highway. (1) Except as provided in 87-2-803 and 87-6-405, a person may not hunt or attempt to hunt any game animal or game bird on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state.

(2) A person convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

Section 2. Section 87-6-405, MCA, is amended to read:

"87-6-405. Unlawful use of vehicle while hunting. (1) Except as provided in 87-2-803, a person may not hunt or attempt to hunt any game animal or game bird from any self-propelled, motor-driven, or drawn vehicle. *For the purposes of this section, the term "hunt" does not include:*

(a) *spotting game from a vehicle; or*

(b) if hunting on, from, or across a road or trail or the shoulder, berm, or barrow pit right-of-way of a road or trail that is not a public highway, as defined in 61-1-101, a person who has both feet on the ground and whose body is outside of a vehicle.

(2) A person may not:

(a) concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of or attempt to concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of a game animal or game bird from or with the use or aid of a self-propelled, motor-driven, or drawn vehicle. This subsection (2)(a) does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(b) use a motor-driven vehicle other than on a road or trail designated for travel by a landowner unless permission has been given by that landowner;

(c) use a motor-driven vehicle on a road or trail on state land if that road or trail is posted as closed by the land management agency unless permission has been given by that land management agency. The restriction in this subsection (2)(c) applies only to state land and not to federal land.

(3) The following penalties apply for a violation of this section:

(a) A person convicted of or who forfeits bond or bail after being charged with a violation of subsection (1) shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.

(b) A person convicted of or who forfeits bond or bail after being charged with a violation of subsection (2) shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(c) A person convicted of or who forfeits bond or bail after being charged with a second or subsequent violation of subsection (2)(a) within 5 years shall be fined not less than \$500 or more than \$1,000 or be imprisoned for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved March 31, 2017

CHAPTER NO. 129

[HB 163]

AN ACT ALLOWING FOR DESIGNATION OF LAY CAREGIVERS FOR HOSPITAL PATIENTS; REQUIRING HOSPITALS TO PROVIDE AN OPPORTUNITY FOR DESIGNATION OF CAREGIVERS; REQUIRING

HOSPITALS TO PROVIDE A DISCHARGE PLAN AND INSTRUCTIONS TO CAREGIVERS; AND LIMITING GOVERNMENTAL LIABILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Aftercare" means assistance provided by a lay caregiver to a patient after the patient's discharge from a hospital and limited to the patient's condition at the time of discharge, including but not limited to assistance with:

- (a) basic activities of daily living;
- (b) instrumental activities of daily living; and
- (c) medical or nursing tasks that do not require a licensed professional.

(2) "Discharge" means a patient's exit or release from a hospital to the patient's residence after an inpatient hospital admission.

(3) "Entry" means an individual's admission into a hospital for the purposes of inpatient care.

(4) "Hospital" means a hospital or critical access hospital as those terms are defined in 50-5-101.

(5) (a) "Lay caregiver" means an individual designated as a lay caregiver by a patient or the patient's legal representative to provide aftercare to a patient in the patient's residence. The term includes but is not limited to a spouse, relative, partner, friend, or neighbor.

(b) The term does not include an individual who receives a third-party payment for providing post-discharge assistance to a patient unless the individual is providing assistance under a Medicaid self-directed service delivery model authorized by the state.

(6) "Legal representative" means:

- (a) a legal guardian;
- (b) a person who holds a medical power of attorney; or
- (c) a representative named in an advance health care directive recognized under Montana law or the law of another state.

(7) (a) "Residence" means a dwelling that the patient considers to be the patient's home, including the home of a lay caregiver, relative, or friend.

(b) The term does not include an assisted living facility, state-licensed group home, hospital, rehabilitation facility, or skilled nursing facility.

Section 2. Lay caregiver -- designation. (1) (a) As soon as practicable after a patient's entry and before the patient's discharge or transfer, a hospital shall provide the patient or, if applicable, the patient's legal representative with at least one opportunity to designate at least one lay caregiver.

(b) If the patient is unconscious or otherwise incapacitated upon entry, the hospital shall provide the patient or the patient's legal representative with an opportunity to designate a lay caregiver as soon as practicable after the patient regains consciousness or capacity.

(2) If the patient or the patient's legal representative declines to designate a lay caregiver, the hospital shall appropriately document the decision.

(3) If a lay caregiver is designated pursuant to this section, the hospital shall:

- (a) promptly request the written consent of the patient or legal representative to release medical information to the lay caregiver, using the hospital's established procedures for releasing personal health information and in compliance with all state and federal laws governing release of the information; and

(b) appropriately document the designation of the lay caregiver, the relationship of the lay caregiver to the patient, and the name, telephone number, and address of the lay caregiver.

(4) If the patient or the patient's legal representative declines to consent to the release of medical information to the lay caregiver, the hospital is not required to provide notice to the lay caregiver as provided in [section 3] or to provide information contained in the discharge plan developed pursuant to [section 4].

(5) A patient or the patient's legal representative may change the designated lay caregiver at any time. The hospital shall appropriately document the change as soon as practicable.

(6) A person designated as a lay caregiver pursuant to this section is not obligated to perform any aftercare tasks for a patient.

(7) This section may not be construed to require a patient or a patient's legal representative to designate a lay caregiver.

Section 3. Notice to designated lay caregiver. (1) A hospital shall notify a patient's designated lay caregiver of the patient's impending discharge or transfer to another hospital or facility licensed by the state as soon as practicable. Notice may be provided after the patient's physician issues a discharge order and prior to the patient's discharge or transfer.

(2) If the hospital is unable to contact the lay caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to the patient or an appropriate discharge or transfer of the patient. The hospital shall appropriately document the inability to contact the lay caregiver.

Section 4. Instruction to designated lay caregiver. (1) As soon as practicable and before a patient's discharge, the hospital shall:

(a) consult with the lay caregiver and the patient;

(b) issue a discharge plan that describes a patient's aftercare needs at the patient's residence; and

(c) provide the lay caregiver with an opportunity for instruction in the aftercare tasks described in the discharge plan.

(2) At a minimum, a discharge plan prepared pursuant to this section must:

(a) note the name and contact information of the lay caregiver;

(b) describe all aftercare tasks necessary to maintain the patient's ability to remain in the patient's residence, taking into account the capabilities and limitations of the lay caregiver; and

(c) provide contact information for relevant followup care and for resources needed to successfully carry out the discharge plan.

(3) Instruction for the lay caregiver may be conducted in person, by telephone, or by video technology at the discretion of the lay caregiver. At a minimum, the instruction shall:

(a) be provided, to the extent possible, in nontechnical language;

(b) give the lay caregiver and patient an opportunity to ask questions about the aftercare tasks; and

(c) in a culturally competent manner, provide answers to the lay caregiver's and patient's questions.

(4) Instruction required pursuant to this section must be appropriately documented. At a minimum, the documentation must include the date, time, and contents of the instruction.

(5) Nothing in this section may delay the patient's discharge or transfer to another facility.

Section 5. Noninterference with powers of existing health care directives. (1) Nothing in this act may be construed to interfere with the rights of an agent operating under a valid health care directive.

(2) Designation as a lay caregiver by itself does not:
 (a) constitute designation as a legal representative; or
 (b) authorize the lay caregiver to make health care decisions on behalf of the patient.

Section 6. Noninterference with care or discharge. Nothing in [sections 1 through 7] shall delay or otherwise affect:

- (1) the medical care provided to the patient; or
- (2) an appropriate discharge or transfer of the patient.

Section 7. Immunity. (1) Nothing in [sections 1 through 7] may be construed to create a new private right of action not otherwise existing in law against a hospital or any of its directors, trustees, officers, employees, or agents or any contractors with whom the hospital has a contractual relationship.

(2) A hospital, its directors, trustees, officers, employees, and agents and any contractors with whom the hospital has a contractual relationship may not be held liable for the services rendered or not rendered by the lay caregiver to the patient at the patient's residence if the hospital has complied with [sections 1 through 7] and acted reasonably and in good faith.

Section 8. Two-thirds vote required. Because [section 7] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1 through 7].

Approved March 31, 2017

CHAPTER NO. 130

[HB 172]

AN ACT CLARIFYING CERTAIN RURAL TELEPHONE COOPERATIVE VOTE REQUIREMENTS; DEFINING "SUBSTANTIAL PORTION" FOR RURAL TELEPHONE COOPERATIVES; AMENDING SECTION 35-18-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-317, MCA, is amended to read:

"35-18-317. Disposition or encumbrance of property. (1) (a) Except as provided in subsection (2) and in accordance with 35-18-318, a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless the sale, mortgage, lease, or other disposition or encumbrance is:

- (a)(i) authorized at a duly held meeting of cooperative members;
- (b)(ii) approved by not less than two-thirds of all the members of the cooperative; and
- (c)(iii) described in the notice of the meeting.

(b) *For the purposes of this section, as the term applies to a telephone cooperative, "substantial portion" means 20% or more of the net book value of the telephone cooperative as disclosed in its audited financial statements as of the close of its most recent fiscal year.*

(2) Except as provided in 35-18-318, the board of trustees of a cooperative, without authorization by the cooperative members, may:

- (a) authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbering of any or all of:

(i) the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated; and

(ii) the revenue and income from the property, assets, rights, privileges, licenses, franchises, and permits; and

(b) determine the terms and conditions necessary to secure any indebtedness of the cooperative to:

(i) the United States of America;

(ii) any instrumentality or agency of the United States; or

(iii) any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of the property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2017

CHAPTER NO. 131

[HB 173]

AN ACT EXPEDITING PERMANENCY FOR CHILDREN IN YOUTH IN NEED OF CARE CASES BY PROVIDING DEADLINES FOR TREATMENT PLANS AND PERMANENCY HEARINGS; AND AMENDING SECTIONS 41-3-443 AND 41-3-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-443, MCA, is amended to read:

“41-3-443. Treatment plan – contents – changes. (1) The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

(c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in temporary medical or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.

(6) *A treatment plan must be ordered by no later than 30 days after the date of the dispositional hearing held pursuant to 41-3-438, except for good cause shown.*"

Section 2. Section 41-3-604, MCA, is amended to read:

"41-3-604. When petition to terminate parental rights required. (1)

If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in

foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed.

(6) *A hearing on a petition for termination of parental rights must be held no later than 45 days from the date the petition was served on the parent or parents, except for good cause shown.*"

Approved March 31, 2017

CHAPTER NO. 132

[HB 201]

AN ACT PROVIDING THAT CHILDREN IN YOUTH IN NEED OF CARE PROCEEDINGS ARE REPRESENTED BY A COURT-APPOINTED SPECIAL ADVOCATE OR OTHER QUALIFIED PERSON AS GUARDIAN AD LITEM; AND AMENDING SECTION 41-3-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-112, MCA, is amended to read:

"41-3-112. Guardian Appointment of court-appointed special advocate – guardian ad litem. (1) In every judicial proceeding, the court shall appoint a *court-appointed special advocate as the guardian ad litem* for any child alleged to be abused or neglected. *If a court-appointed special advocate is not available for appointment, the court may appoint an attorney or other qualified person to serve as the guardian ad litem.* The department or any member of its staff who has a direct conflict of interest may not be

appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) The guardian ad litem must have received appropriate training that is specifically related to serving as a child's court-appointed representative.

(3) The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties:

(a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare;

(f) to perform other duties as directed by the court; and

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights.

(4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child.

(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment."

Approved March 31, 2017

CHAPTER NO. 133

[HB 220]

AN ACT REVISING PHYSICIAN ASSISTANT LAWS TO INCLUDE PHYSICIAN ASSISTANTS AS MENTAL HEALTH PROFESSIONALS AND PROFESSIONAL PERSONS FOR THE PURPOSES OF PROVIDING MENTAL HEALTH CARE; AND AMENDING SECTION 53-21-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) “Court” means any district court of the state of Montana.

(6) “Department” means the department of public health and human services provided for in 2-15-2201.

(7) “Emergency situation” means:

(a) a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment; or

(b) a situation in which any person who appears to be suffering from a mental disorder and appears to require commitment is substantially unable to provide for the person’s own basic needs of food, clothing, shelter, health, or safety.

(8) “Friend of respondent” means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

(9) (a) “Mental disorder” means any organic, mental, or emotional impairment that has substantial adverse effects on an individual’s cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) “Mental health facility” or “facility” means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) “Mental health professional” means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(g) *a physician assistant licensed under Title 37, chapter 20, with a clinical speciality in psychiatric mental health.*

(12) (a) “Neglect” means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) “Next of kin” includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist;

(d) *a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric mental health; or*

~~(d)~~(e) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Approved March 31, 2017

CHAPTER NO. 134

[HB 247]

AN ACT REVISING LAWS RELATED TO SEXUAL ABUSE OF CHILDREN; CLARIFYING THAT COERCING A CHILD IN PERSON TO VIEW SEXUALLY EXPLICIT MATERIAL OR ACTS CONSTITUTES SEXUAL ABUSE OF CHILDREN; AMENDING SECTION 45-5-625, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication *or in person*, persuades, entices, counsels, *coerces, encourages, directs,* or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated, *or view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any sexual activity that is illegal;*

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

- (i) actual or simulated:
 - (A) sexual intercourse, whether between persons of the same or opposite sex;
 - (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
 - (C) bestiality;
 - (D) masturbation;
 - (E) sadomasochistic abuse;
 - (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or
 - (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or
 - (ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.
- (c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.
- (d) "Visual medium" means:
 - (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
 - (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

Section 2. Applicability. [This act] applies to all offenses committed on or after [the effective date of this act].

Approved March 31, 2017

CHAPTER NO. 135

[HB 256]

AN ACT CLARIFYING THE DEFINITION OF ELECTRIC FENCES AS LEGAL FENCES; AND AMENDING SECTION 81-4-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-101, MCA, is amended to read:

"81-4-101. Legal fences defined. Except as provided in subsections (2) and (7), a legal fence must be at least 42 inches but not more than 48 inches in height. The following are legal fences in Montana:

(1) fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which is not less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts;

(2) (a) corral fences that are used exclusively for the purposes of enclosing stacks situated outside of any lawful enclosure and that:

- (i) are not less than 16 feet from the enclosed stack;
- (ii) are substantially built with posts not more than 8 feet distant from each other; and

(iii) consist of at least five strands of well-stretched barbed wire not less than 5 or more than 6 feet high;

(b) a fence as effectual for the purpose of a corral fence as the type described in subsection (2)(a);

(3) fences constructed of any standard woven wire, securely fastened to substantial posts not more than 30 feet apart, with two equidistant barbed wires placed above the woven wire;

(4) other fences made of barbed wire, which must be as strong and as well calculated to protect enclosures as those in subsections (1) through (3);

(5) fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart and, if leaning posts are used, a pole or wire fastened securely on the inside of the leg or support of each leaning post;

(6) electric fences ~~consisting of three or more wires; and that:~~

(a) consist of at least three tightly stretched strands of at least 12.5 gauge, high-tensile steel or its equivalent;

(b) are strung by sufficient posts set firmly in the ground not more than an average distance of 50 feet apart along the full span;

(c) are charged with a standard charger with an output of at least one-half joule and with sufficient energy for the entirety of the fence; and

(d) are regularly maintained by the fence owner to ensure the fence is operable;

(7) rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass; and

(8) any legal fence listed in subsections (1) through (5) or (7) that also includes at least one strand of electrified wire.”

Approved March 31, 2017

CHAPTER NO. 136

[HB 276]

AN ACT REVISING REIMBURSEMENT CONDITIONS FOR A NETWORK PHARMACY OR PHARMACIST TO ALLOW OPTING OUT IF ACQUISITION COSTS ARE NOT COVERED; CLARIFYING PHARMACEUTICAL REIMBURSEMENT COVERAGE TO INCLUDE HEALTH INSURANCE ISSUERS; DEFINING “REFERENCE PRICING”; AMENDING SECTIONS 33-22-170 AND 33-22-172, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-170, MCA, is amended to read:

“**33-22-170. Definitions.** As used in 33-22-170 through 33-22-173 and [section 3], the following definitions apply:

(1) “Maximum allowable cost list” means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

(2) “Pharmacist” means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.

(3) “Pharmacy” means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit manager, health insurance issuer, or plan sponsor.

(4) “Pharmacy benefit manager” means a person who contracts with pharmacies on behalf of ~~an insurer~~ a health insurance issuer, third-party administrator, or plan sponsor to process claims for prescription drugs, provide retail network management for pharmacies or pharmacists, and pay pharmacies or pharmacists for prescription drugs.

(5) “Reference pricing” means a calculation for the price of a pharmaceutical that uses the most current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer, or pharmacy benefit manager and a pharmacy or pharmacist.”

Section 2. Section 33-22-172, MCA, is amended to read:

“33-22-172. Maximum allowable cost or reference price list – price formulation, updating, and disclosure – exceptions. (1) At the time it enters into a contract with a pharmacy and subsequently upon request, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall provide the pharmacy with the sources used to determine the pricing for the maximum allowable cost list or the reference used for reference pricing.

(2) ~~A~~ If using a maximum allowable cost list, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall:

(a) review and update the price information for each drug on the maximum allowable cost list at least once every 10 calendar days to reflect any modification of pricing;

(b) establish a process for eliminating products from the maximum allowable cost list or modifying the prices in the maximum allowable cost list in a timely manner to remain consistent with pricing changes and product availability in the marketplace; and

(c) provide a process for each pharmacy to readily access the maximum allowable cost list specific to the pharmacy in a searchable and usable format.

(3) If using reference pricing, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall:

(a) review and update no less than every 10 business days the price information for each drug, product, supply, or service for which reference pricing is used; and

(b) provide a process for each pharmacy to readily access the reference pricing specific to the plan sponsor or the health insurance issuer’s plan.

(4) A plan sponsor, health insurance issuer, or pharmacy benefit manager may not prohibit a pharmacist from discussing reimbursement criteria with a patient.”

Section 3. Opt-out of reference pricing – notification. (1) A pharmacist or pharmacy in a network plan with a plan sponsor, health insurance issuer, or pharmacy benefit manager providing covered drugs on a reference pricing basis may decline to provide a brand-name drug, multisource generic drug, supply, or service if the reference pricing amount is less than the acquisition cost paid by the pharmacy or pharmacist.

(2) If a pharmacist or pharmacy declines to provide the prescription or service under the conditions in subsection (1), the pharmacy or pharmacist shall attempt to provide the customer with adequate information as to where the prescription for the drug, supply, or service may be filled.

(3) (a) The insurance commissioner may investigate and review on a random basis to determine whether a plan sponsor, health insurance issuer, or pharmacy benefit manager has an adequate network of pharmacies or pharmacists, particularly in rural areas, and whether mail-order pharmacies in a network are adequate to serve rural areas if a local pharmacy or pharmacist is unavailable.

(b) A pharmacy or pharmacist who declines to provide the prescriptions or service as provided in subsection (2) shall cooperate with any investigation and review of network adequacy.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 3].

Section 5. Effective date -- applicability date. [This act] is effective January 1, 2018, and applies to insurance policies and plans issued and in effect on or after January 1, 2018.

Approved March 31, 2017

CHAPTER NO. 137

[HB 342]

AN ACT ADDING AGRITOURISM TO THE LIST OF MONTANA RECREATIONAL ACTIVITIES IN WHICH PARTICIPANTS ASSUME THE LIABILITY FOR THE INHERENT RISKS OF THOSE ACTIVITIES; AMENDING SECTION 27-1-752, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-752, MCA, is amended to read:

“27-1-752. Definitions. As used in 27-1-751 through 27-1-754, the following definitions apply:

(1) *“Agritourism” means a form of commercial enterprise that links agricultural production or agricultural processing with tourism in order to attract visitors to a farm, ranch, or other agricultural business for purposes of entertaining or educating the visitors.*

(1)(2) *“Inherent risks” means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of any sport or recreational activity and that cannot be prevented by the use of reasonable care.*

(2)(3) *“Provider” means a person, corporation, partnership, or other business entity, including a governmental entity as defined in 2-9-111, that promotes, offers, or conducts a sport or recreational opportunity for profit or otherwise.*

(3)(4) *“Sport or recreational opportunity” means any sporting activity, whether undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking, swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow sliding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, target shooting, hunting, fishing, backcountry trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, agritourism, an on-farm educational opportunity, and any similar recreational activity.”*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2017

CHAPTER NO. 138

[HB 370]

AN ACT PROHIBITING ANY PERSON FROM BEING EXCLUDED FROM AN OPEN MEETING; ALLOWING RECORDINGS OF PUBLIC MEETINGS BY ANY PERSON; AND AMENDING SECTION 2-3-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-211, MCA, is amended to read:

“2-3-211. Recording. ~~Accredited press representatives~~ *A person* may not be excluded from any open meeting under this part and may not be prohibited from ~~taking photographs~~ *photographing*, *televising*, *transmitting images or audio by electronic or digital means*, or recording ~~such~~ *open* meetings. The presiding officer may ~~assure~~ *ensure* that ~~such~~ *these* activities do not interfere with the conduct of the meeting.”

Approved March 31, 2017

CHAPTER NO. 139

[HB 498]

AN ACT EXTENDING THE UNLOCKING PUBLIC LANDS PROGRAM; AND AMENDING SECTION 6, CHAPTER 346, LAWS OF 2013, AND SECTION 3, CHAPTER 392, LAWS OF 2015.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 6, Chapter 346, Laws of 2013, is amended to read:

“Section 6. Termination. [This act] terminates December 31, ~~2018~~ *2027*.”

Section 2. Section 3, Chapter 392, Laws of 2015, is amended to read:

“Section 3. Section 6, Chapter 346, Laws of 2013, is amended to read:

“Section 6. Termination. [This act] terminates December 31, ~~2018~~ *2020* ~~2027~~.”

Approved March 31, 2017

CHAPTER NO. 140

[SB 79]

AN ACT REVISING RURAL IMPROVEMENT DISTRICT LAWS; ALLOWING FOR THE CREATION OF A RURAL IMPROVEMENT DISTRICT SOLELY FOR ROAD MAINTENANCE UPON PETITION OF THE OWNERS OF MORE THAN 85% OF THE AREA IN THE PROPOSED DISTRICT; AND AMENDING SECTIONS 7-12-2102, 7-12-2105, 7-12-2109, AND 7-12-2113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2102, MCA, is amended to read:

“7-12-2102. Authorization to create rural improvement districts – property owners may petition for creation. (1) Whenever the public interest or convenience may require, the board of county commissioners may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) (a) ~~The~~ *Except as provided in subsection (2)(b)*, the board of county commissioners may order and create a special improvement district upon the

receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(b) The board of county commissioners may order and create a special improvement district solely for the purpose of road maintenance upon the receipt of a petition to create the district that contains the consent of the owners of more than 85% of the area of the property proposed in the petition to be included in the district. The property proposed to be included in the district must be located in a residential subdivision, except that the owner of property located outside of a residential subdivision may consent to the inclusion of the property in the proposed district.

(3) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Properties within the proposed district boundaries inside the city may not be included in the rural special improvement district if, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels in the city representing not less than 40% of the total projected assessments against properties in the city protest the creation of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.”

Section 2. Section 7-12-2105, MCA, is amended to read:

“7-12-2105. Notice of resolution of intention to create district – hearing – exception. (1) Upon passage of a resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner’s name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. If the method of assessment described in 7-12-2151(1)(d) is used, the notice must state that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-2151(4).

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2)(a).”

Section 3. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district – exception. (1) (a) Except as provided in subsections (1)(b) and (2), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the creation or extension of the district to be assessed, or both. The protest must be in writing, identify the property in the district owned by the protestor, and except as provided in 7-12-2141, be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.

(b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

(2) The provisions of subsection (1)(a) do not apply if a resolution of intention to create the district is a result of a petition submitted as provided in 7-12-2102(2)(a).

(3) (a) For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.”

Section 4. Section 7-12-2113, MCA, is amended to read:

“7-12-2113. Resolution creating district – power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention that is introduced and passed by the board.

(2) The board has jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when sufficient protests have not been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest has been found by the board to be insufficient or has been overruled;

(c) when a protest against extending the proposed district has been heard and denied; or

(d) when a resolution creating the district is passed upon receipt of a petition as provided in 7-12-2102(2)(a).”

Approved April 3, 2017

CHAPTER NO. 141

[HB 64]

AN ACT REVISING THE CHILD ABUSE AND NEGLECT COURT DIVERSION PILOT PROJECT; EXPANDING THE PILOT PROJECT TO INCLUDE PERSONS RECEIVING VOLUNTARY PROTECTIVE SERVICES;

AMENDING SECTIONS 3-1-702, 41-3-302, AND 41-3-305, MCA; AMENDING SECTION 7, CHAPTER 376, LAWS OF 2015; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-702, MCA, is amended to read:

“3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

(4) recommend to the supreme court improvements in the judiciary;

(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

(6) administer state funding for district courts, as provided in chapter 5, part 9;

(7) administer and report on the child abuse *and neglect* court diversion pilot project provided in 41-3-305;

(8) administer the judicial branch personnel plan; and

(9) perform other duties that the supreme court may assign. (Subsection (7) terminates June 30, 2017--sec. 7, Ch. 376, L. 2015 2019.)”

Section 2. Section 41-3-302, MCA, is amended to read:

“41-3-302. Responsibility of providing protective services – voluntary protective services agreement. (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption, *or to take temporary custody of a child when consented to by a parent, guardian, or other person having physical or legal custody of the child as part of the parent’s, guardian’s, or other person’s participation in the child abuse and neglect court diversion pilot project provided for in 41-3-305.*

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

(3) (a) The department may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent, ~~or other person responsible for a child’s welfare guardian, or other person having physical or legal custody of the child~~ for the purpose of keeping the child safely in the home *or for the purpose of returning the child to the home within a 30-day temporary out-of-home protective placement.*

(b) The department shall inform a parent, ~~or other person responsible for a child's welfare~~ *guardian, or other person having physical or legal custody of a child* who is considering entering into a voluntary protective services agreement that the parent, *guardian, or other person* may have another person of the parent's, ~~or responsible person's~~ *guardian's, or other person's* choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent, ~~or other person responsible for the child's welfare~~ *guardian, or other person* and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(4) A voluntary protective services agreement may include provisions for:

(a) a family group decisionmaking meeting and implementation of safety plans developed during the meeting;

(b) a professional evaluation and treatment of ~~a~~ *the parent, guardian, or other person having physical or legal custody of the child or of the child*, or both;

(c) a safety plan for the child;

(d) in-home services aimed at permitting the child to remain safely in the home;

(e) temporary relocation of a parent, *guardian, or other person having physical or legal custody of the child* in order to permit the child to remain safely in the home;

(f) a 30-day temporary out-of-home protective placement; or

(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to other service providers.

(5) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude the department from filing a petition pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned to the ~~parents~~ *parent, guardian, or other person having physical or legal custody of the child* within 2 working days of termination of the agreement unless an abuse and neglect petition is filed by the department *or unless the parent, guardian, or other person having physical or legal custody of the child and the department enter into a written agreement to participate in the child abuse and neglect court diversion pilot project provided for in 41-3-305 and any continuing out-of-home placement of the child does not exceed a period of 180 days from the date the child was placed in the temporary out-of-home protective placement.*"

Section 3. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services – voluntary protective services agreement. (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

(3) (a) The department may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent, ~~or other person responsible for a child's welfare~~ *guardian, or other person*

having physical or legal custody of the child for the purpose of keeping the child safely in the home or for the purpose of returning the child to the home within a 30-day temporary out-of-home protective placement.

(b) The department shall inform a parent, ~~or other person responsible for a child's welfare~~ *guardian, or other person having physical or legal custody of a child* who is considering entering into a voluntary protective services agreement that the parent, *guardian, or other person* may have another person of the parent's, ~~or responsible person's~~ *guardian's, or other person's* choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent, ~~or other person responsible for the child's welfare~~ *guardian, or other person* and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(4) A voluntary protective services agreement may include provisions for:

(a) a family group decisionmaking meeting and implementation of safety plans developed during the meeting;

(b) a professional evaluation and treatment of ~~a~~ *the parent, guardian, or other person having physical or legal custody of the child or of the child, or both;*

(c) a safety plan for the child;

(d) in-home services aimed at permitting the child to remain safely in the home;

(e) temporary relocation of a parent, *guardian, or other person having physical or legal custody of the child* in order to permit the child to remain safely in the home;

(f) a 30-day temporary out-of-home protective placement; or

(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to other service providers.

(5) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude the department from filing a petition pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned to the ~~parents~~ *parent, guardian, or other person having physical or legal custody of the child* within 2 working days of termination of the agreement unless an abuse and neglect petition is filed by the department."

Section 4. Section 41-3-305, MCA, is amended to read:

"41-3-305. (Temporary) Child abuse and neglect court diversion pilot project. (1) There is a child abuse *and neglect* court diversion pilot project. The purpose of the pilot project is to use meetings facilitated by a court diversion officer to informally resolve cases, prior to the filing of an abuse and neglect petition under Title 41, chapter 3, part 4, in which the department has exercised emergency protective services pursuant to 41-3-301 and has removed a child from the custody of a parent, guardian, or other person having physical or legal custody of the child or *cases in which the department has provided voluntary protective services pursuant to 41-3-302.*

(2) (a) The office of the court administrator provided for in Title 3, chapter 1, part 7, shall administer the pilot project, including:

(i) selecting ~~three~~ judicial districts in which to implement the pilot project;

(ii) hiring court diversion officers to staff a pilot project in each of the selected judicial districts; and

(iii) establishing and measuring performance benchmarks.

(b) The office of the court administrator shall report to the law and justice interim committee regarding the administration and performance of the pilot project.

(3) (a) (i) Within 2 working days of an emergency removal pursuant to 41-3-301 of a child from a parent, guardian, or other person having physical or legal custody of the child *or within 2 working days of the termination of a voluntary protective services agreement*, the department and the parent, guardian, or other person having physical or legal custody of the child from whom the child was removed *or with whom a voluntary protective services agreement was terminated* may, if the requirements of subsection (3)(a)(ii) are met, enter into a written agreement to participate in the pilot project for a period of not more than ~~6 months~~ *180 days* from *either* the date of the emergency removal *or the date the child was placed in a temporary out-of-home protective placement pursuant to a voluntary protective services agreement or, if voluntary protective services were provided and the child remained in the home, the date the voluntary protective services agreement was terminated*. Execution of the written agreement to participate in the pilot project suspends the requirements provided in 41-3-301(6) for a period of not more than ~~6 months~~ *180 days*. A party to the written agreement to participate in the pilot project may terminate the agreement at any time.

(ii) Before a person may enter into a written agreement to participate in the pilot project, the person:

(A) must be informed in writing of the person's rights, including:

(I) advisement on the person's rights if the person voluntarily participates in the pilot project or chooses not to participate in the pilot project; and

(II) advisement that the person may have another person of the person's choosing present whenever the terms of the written agreement to participate in the pilot project or the terms of the written diversion plan are under discussion with the department or the court diversion officer; and

(B) shall sign and acknowledge that the person fully understands the person's rights and voluntarily agrees to participate in the pilot project.

(b) Within 15 working days of executing the *written agreement to participate in the pilot project*, the parties shall meet with the court diversion officer and ~~the officer shall approve~~ *execute a written diversion plan for the case, subject to the court diversion officer's approval, which may include but is not limited to:*

(i) an ongoing out-of-home placement of the child for a period of not more than ~~6 months~~ *180 days* from the date of the emergency removal *or initiation of the temporary out-of-home protective placement*; and

(ii) any other terms or conditions agreed to by the parties, including referrals to other service providers, that would allow the child to safely return to the home within the time period covered by the agreement *or safely remain in the home*.

(c) *The written diversion plan may be amended in writing with the approval of the court diversion officer.*

(e)(d) ~~If an agreement~~ *a written diversion plan is not executed by the parties, is not approved by the court diversion officer under this subsection (3), or is not successfully completed or if reunification of the child with the parent, guardian, or other person having physical or legal custody of the child will not occur before the written agreement to participate in the pilot project expires, the department shall terminate the written agreement to participate in the pilot project and initiate the process for filing a petition for child abuse*

and neglect under Title 41, chapter 3, part 4. The social worker shall submit an affidavit regarding the circumstances of the emergency removal *or the provision of voluntary protective services* and a copy of the *written agreement to participate in the pilot project, as well as the written diversion plan if one exists*, to the county attorney within 10 working days of the termination of the *written agreement to participate in the pilot project*.

(d)(e) An audio recording must be made of each meeting that a court diversion officer has with the parties.

(4) A party involved in the pilot project does not have a right to counsel prior to the filing of an abuse and neglect petition.

(5) A court may consider any services that are provided as part of the pilot project when making findings required under Title 41, chapter 3, parts 4 and 6. (Terminates June 30, 2017--sec. 7, Ch. 376, L. 2015 2019.)”

Section 5. Section 7, Chapter 376, Laws of 2015, is amended to read:

“**Section 7. Termination.** [This act] terminates June 30, 2017 2019.”

Section 6. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2019.

Section 7. Termination. [Sections 1, 2, and 4] terminate June 30, 2019.

Approved April 3, 2017

CHAPTER NO. 142

[HB 183]

AN ACT REPEALING THE TERMINATION DATE ON LAWS, RULEMAKING AUTHORITY, AND OTHER PROVISIONS RELATED TO OUTFITTER'S ASSISTANTS; AND REPEALING SECTION 11, CHAPTER 241, LAWS OF 2013, AND SECTION 1, CHAPTER 136, LAWS OF 2015.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 11, Chapter 241, Laws of 2013, and section 1, Chapter 136, Laws of 2015, are repealed.

Approved April 3, 2017

CHAPTER NO. 143

[HB 282]

AN ACT CREATING A PROCESS FOR A COUNTY COMMISSION TO RESTORE THE TYPE OF ELECTION HELD BY A COUNTY IF AN ELECTION WAS HELD TO CHANGE THE TYPE OF ELECTION WITHOUT HAVING HELD AN ELECTION TO CHANGE THE FORM OF GOVERNMENT; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. County commission authority to correct certain election results. (1) The county commissioners of a county with the statutory basis provided in 7-3-111 may adopt a resolution to change the type of election provided for in 7-3-413 that the county holds if:

(a) the county held an election on the question of revising the type of election provided for in 7-3-413;

(b) the county conducted the election without having held a concurrent election on the question of changing the form of government; and

- (c) as a result of the election, the type of election the county holds changed.
- (2) The resolution must:
 - (a) restore the type of election to the partisan or nonpartisan type it was before the question on revising the type was submitted to electors;
 - (b) be adopted before December 31, 2017; and
 - (c) be filed with the secretary of state.

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates December 31, 2017.

Approved April 3, 2017

CHAPTER NO. 144

[HB 316]

AN ACT ELIMINATING OUTDATED REPORTING OF STATE LAND EQUALIZATION PAYMENTS; AMENDING SECTION 15-1-121, MCA; AND REPEALING SECTIONS 77-1-501, 77-1-502, 77-1-503, AND 77-1-504, MCA.

WHEREAS, a 2016 legislative audit found that legislation in 2001 replaced state land equalization entitlements with a share of the general fund; and

WHEREAS, statutes requiring reporting on state land equalization entitlements still exist but are not necessary or used.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment – purpose – appropriation.

(1) As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government’s share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

- (x) 61-10-148; and
- (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-9-506; and
 - (iv) 27-9-103;
- (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;
 - (g) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
 - (h) late filing fees pursuant to 61-3-220;
 - (i) title and registration fees pursuant to 61-3-203;
 - (j) veterans' cemetery license plate fees pursuant to 61-3-459;
 - (k) county personalized license plate fees pursuant to 61-3-406;
 - (l) special mobile equipment fees pursuant to 61-3-431;
 - (m) single movement permit fees pursuant to 61-4-310;
 - (n) state aeronautics fees pursuant to 67-3-101; and
 - (o) department of natural resources and conservation payments in lieu of taxes pursuant to *former* Title 77, chapter 1, part 5.

(3) (a) Except as provided in subsection (3)(b), the total amount received by each local government in the prior fiscal year as an entitlement share payment under this section is the base component for the subsequent fiscal year distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. Subject to subsection (3)(b), the sum of all local governments' base components is the fiscal year entitlement share pool.

(b) For fiscal year 2016, the fiscal year entitlement share pool is reduced by \$1,049,904.

(4) (a) Subject to subsection (3)(b), the base entitlement share pool must be increased annually by an entitlement share growth rate as provided for in this subsection (4). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year.

(b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the next fiscal year in the following manner:

(i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources referred to in subsections (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporate income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for

the second and third previous completed fiscal years received from the same sources multiplied by 0.25.

(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:

(A) the sum of the first factor plus the second factor; or

(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

(iii) In no instance can the entitlement growth factor be less than 1. Subject to subsection (4)(b)(iv), the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

(iv) For fiscal year 2016, the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment minus \$1,049,904 to determine the subsequent fiscal year payment.

(5) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (8). The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

(6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2) for local governments, the funding provided for in subsection (8) of this section, and the amounts determined under 15-1-123(4) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Except for the distribution made under 15-1-123(2)(b), the distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total

population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(4), if a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any funding. If a tax increment financing district referred to in subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

(b) Except for the reimbursement made under 15-1-123(4)(b), one-half of the payments provided for in this subsection (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment financing districts is as follows:

Deer Lodge	TIF District 1	\$ 2,833
Deer Lodge	TIF District 2	2,813
Flathead	Kalispell - District 2	4,638
Flathead	Kalispell - District 3	37,231
Flathead	Whitefish District	148,194
Gallatin	Bozeman - downtown	31,158
Missoula	Missoula - 1-1C	225,251
Missoula	Missoula - 4-1C	30,009
Silver Bow	Butte - uptown	255,421

(9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from tax increment financing districts, from countywide transportation block grants, or from countywide retirement block grants.

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference

between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base component, the entitlement share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

- 77-1-501. List of state lands by county.
- 77-1-502. Computation of state land equalization amount.
- 77-1-503. Form to be completed by department of revenue.
- 77-1-504. Processing of statements.

Approved April 3, 2017

CHAPTER NO. 145

[HB 388]

AN ACT REVISING WHO MAY BE CONSIDERED AN ELECTOR IN AN IRRIGATION DISTRICT ELECTION; REQUIRING OWNERS OF LAND IN A DISTRICT TO NOTIFY THE IRRIGATION DISTRICT OF WHO IS DESIGNATED TO VOTE; REQUIRING THE LIST OF DESIGNEES TO BE PROVIDED TO THE COUNTY ELECTION OFFICE AT LEAST 60 DAYS BEFORE AN ELECTION; AMENDING SECTION 85-7-1710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1710, MCA, is amended to read:

"85-7-1710. Qualification of electors and nature of voting rights. (1) (a) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to irrigable lands within the district, designated "electors", are entitled to vote:

(a) ~~all individuals having the qualifications of if, except as provided in subsection (1)(b), they are qualified electors under the constitution and general election laws of the state; except that registration of electors and county residency may not be required;~~

(b)(i) guardians, executors, administrators, and trustees;

(c)(ii) domestic corporations, by their duly authorized agents; and

(iii) owners of land described in subsection (3), including but not limited to corporations, limited liability companies, partnerships, and other entities that may vote through their duly authorized agents.

(b) *Electors under this section are not subject to state residency or registration requirements.*

(2) In all elections held under this part, each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks except as otherwise provided for, election precincts, or district divisions, but any elector owning any less than 1 acre of irrigable land is entitled to one vote. Until the

irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district must be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners ~~may~~ *shall* designate one of their number or an agent to cast the vote for the owners. Whenever the land is owned by a single owner, the owner *at the owner's discretion* may designate an agent to cast the vote. Only one vote may be cast for each acre of irrigable land or major fraction of an acre by the voting ~~co-owner or by an agent individual~~. Whenever land is under contract of sale to a purchaser ~~residing within the state~~, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation, of a single owner or co-owners, of the co-owner designated for the purpose of voting, or of the purchaser of land under contract of sale shall file with the secretary of the district ~~or with the election officials~~ a written instrument of the agent's authority, executed and acknowledged by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale, and upon filing, the agent or co-owner or purchaser is an elector within the meaning of this part.

(4) The board of commissioners shall choose one of the following methods of balloting:

(a) for 10 votes or less, separate ballots must be used, and for more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10; or

(b) the elector shall submit a ballot that includes the number of acres owned and the number of votes being cast.

(5) (a) *Each holder of the title or evidence of title to irrigable land within the district who is qualified as an elector under subsection (1)(a) shall provide notice to the irrigation district in which the land is located designating the individual who will be voting in the election with respect to the irrigable land. If there is a change in the designation, a new notice must be provided to the irrigation district.*

(b) *The list of designated voters compiled under subsection (5)(a) and maintained and certified by the irrigation district must be provided to the county election office not less than 60 days before the election."*

Section 2. One-time notification requirement. By December 31, 2017, the district shall notify each holder of a title or evidence of title to irrigable land within the district concerning the requirements under 85-7-1710(5)(a).

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2017

CHAPTER NO. 146

[HB 421]

AN ACT REQUIRING THAT FIRE SERVICE TRAINING FEES BE DEPOSITED CONSISTENT WITH THE HIGHER EDUCATION FUND STRUCTURE; AMENDING SECTION 20-31-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-31-402, MCA, is amended to read:

"20-31-402. Cost recovery fee. The board of regents may establish a cost recovery fee for training of commercially employed firefighters, and ~~such fees shall the fees must be deposited to the general fund in accordance with the higher education fund structure."~~

Section 2. Effective date. [This act] is effective on passage and approval.
Approved April 3, 2017

CHAPTER NO. 147

[HB 520]

AN ACT REVISING PROCUREMENT LAWS RELATED TO FIRE DISTRICTS AND FIRE SERVICE AREAS; INCLUDING FIRE DISTRICTS AND FIRE SERVICE AREAS WITHIN THE ENTITIES THAT MAY ENTER INTO ALTERNATIVE PROJECT DELIVERY CONTRACTS; AMENDING SECTION 18-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-501, MCA, is amended to read:

“18-2-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) “Alternative project delivery contract” means a construction management contract, a general contractor construction management contract, or a design-build contract.

(2) “Construction management contract” means a contract in which the contractor acts as the public owner’s construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) “Contractor” has the meaning provided in 18-4-123.

(4) “Design-build contract” means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) “General contractor construction management contract” means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) “Governing body” means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11; or

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23; or

(c) *the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401.*

(7) “Project” means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) “Publish” means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) “State agency” has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency.”

Section 2. Effective date. [This act] is effective on passage and approval.
Approved April 3, 2017

CHAPTER NO. 148

[HB 523]

AN ACT PROVIDING THAT A STATE AGENCY MAY NOT REQUIRE A HISTORICAL OR ARCHAEOLOGICAL SURVEY FOR CERTAIN IRRIGATION PROJECTS; PROVIDING THAT A SURVEY MAY NOT BE REQUIRED AS A CONDITION OF APPLICATION FOR OR APPROVAL OF A PERMIT, LICENSE, LEASE, OR FUNDING FOR RECONSTRUCTION OR MAINTENANCE OF CERTAIN IRRIGATION DITCHES OR APPURTENANCES; AND AMENDING SECTION 22-3-429, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-429, MCA, is amended to read:

“22-3-429. Requests for consultation – public notice – appeal of findings. (1) A federal or state entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit, license, lease, or funding may request the views of the historic preservation officer concerning:

(a) the recommended eligibility for a register listing of any heritage property or paleontological remains;

(b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are found to be eligible for register listing; and

(c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

(2) A request for comment pursuant to 16 U.S.C. 470f may be made simultaneously with a request pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30 calendar days of receiving the request and shall address each property in the request and each topic of the request. In the event that an agency requests simultaneous consultation for two or more criteria under this section, the agency and historic preservation officer may extend the 30-day review period by mutual agreement. If the historic preservation officer fails to comment within that time, that failure is construed as concurrence with the agency's recommendation. In the event of failure to comment on a specific undertaking, the historic preservation officer may not change a finding for a heritage property at a later date.

(3) If the proposed finding is that a heritage property or paleontological remains are involved and that a proposed activity will have an adverse impact on the property or remains, the proposed finding must address all properties or remains involved and describe the characteristics that illustrate the qualities that make the property or remains eligible for inclusion in the register. If the proposed finding includes a conclusion that a property or remains may be eligible but additional information or study is needed to reach an eligibility finding, the finding must specify the type and amount of information required in accordance with standards and guidelines as provided in 22-3-428.

(4) At the time that the state or federal agency requests the views of the historic preservation officer as provided in subsection (1), the agency shall provide notice to the applicant, affected property owners, and other interested persons of the request for consultation and shall identify locations where the submitted materials may be reviewed.

(5) The applicant and any affected property owners have 20 days in which to appeal the historic preservation officer's finding to the director. The appeal

notice must include a written statement of reasons for the appeal and any additional supporting information.

(6) The director of the historical society shall issue a final finding within 30 days of the expiration of the 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit the rights of any applicant or affected property owner to challenge a finding under an existing federal law, regulation, or regulatory or administrative process.

(7) If the applicant or an affected property owner is not satisfied with the finding of the director of the historical society concerning the eligibility of the property or remains for listing in the register or a finding of adverse effect to the property, the entity or property owner may appeal the finding to the district court in either Lewis and Clark County or a county in which affected property is located. Appeal may be taken by filing a petition with the district court citing the decision by the director of the historical society and the evidence upon which the director relied. On appeal, the district court may consider any documents supporting or not supporting the finding, the written comments received by the director of the historical society, and any additional evidence that may be submitted to the court. The district court may substitute its judgment for the judgment of the director of the historical society as to the weight of the evidence.

(8) A state agency may not require a historical or archaeological survey as a condition of applying for or receiving a state or local permit, license, lease, or funding for a project to reconstruct or maintain an irrigation ditch or appurtenant structures or equipment when the ditch or appurtenant structures or equipment are in use or have been in use within the past 10 years, if the reconstruction or maintenance will occur within the existing ditch easement and if the project is not on land owned by the state."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 3, 2017

CHAPTER NO. 149

[SB 103]

AN ACT CLARIFYING THAT A SCHOOL DISTRICT'S OBLIGATION TO PROVIDE THE MINIMUM AGGREGATE HOURS DOES NOT APPLY TO PUPILS DEMONSTRATING PROFICIENCY IN CONTENT ORDINARILY COVERED BY INSTRUCTION; AMENDING SECTION 20-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. (1) The school fiscal year begins on July 1 and ends on June 30. At least the minimum aggregate hours ~~defined~~ *required* in subsection (2) must be conducted during each school fiscal year, except that 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient. *The minimum aggregate hours required in subsection (2) are not required for any pupil demonstrating proficiency pursuant to 20-9-311(4)(d).*

(2) The minimum aggregate hours required by grade are:

(a) 360 hours for a half-time kindergarten program or 720 hours for a full-time kindergarten program, as provided in 20-7-117;

(b) 720 hours for grades 1 through 3; and

(c) 1,080 hours for grades 4 through 12.

(3) For any elementary or high school district that fails to provide for at least the minimum aggregate hours, as listed in subsections (1) and (2), *to any pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)*, the superintendent of public instruction shall reduce the direct state aid for the district for that school year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed *by each pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)*.”

Section 2. Effective date. [This act] is effective July 1, 2017.

Section 3. Applicability. [This act] applies to school fiscal years beginning on or after July 1, 2017.

Approved April 4, 2017

CHAPTER NO. 150

[SB 115]

AN ACT PROVIDING FOR INCREASED FREQUENCY OF STIPENDS AND ADDITIONAL STIPENDS FOR CERTAIN CERTIFIED TEACHERS; MAKING THE STIPENDS ANNUAL; PROVIDING AN ADDITIONAL STIPEND FOR TEACHERS EMPLOYED IN CERTAIN SCHOOLS; AMENDING SECTIONS 19-20-101 AND 20-4-134, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

“19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accumulated contributions” means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member’s individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) “Actuarial equivalent” means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) “Average final compensation” means a member’s highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

(4) “Beneficiary” means one or more persons formally designated by a member or retiree to receive a retirement allowance or payment upon the death of the member or retiree, except for a joint annuitant.

(5) “Benefit recipient” means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(6) “Creditable service” is that service defined by 19-20-401.

(7) “Date of termination” or “termination date” means the last date on which a member performed service in a position reportable to the retirement system.

(8) (a) “Earned compensation” means, except as limited by subsections (8)(b) and (8)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

- (i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;
- (ii) any direct employer payment or reimbursement for:
 - (A) professional membership dues;
 - (B) maintenance;
 - (C) housing;
 - (D) day care;
 - (E) automobile, travel, lodging, or entertaining expenses; or
 - (F) any similar form of maintenance, allowance, or expenses;
- (iii) the imputed value of health, life, or disability insurance or any other fringe benefits;
- (iv) any noncash benefit provided by an employer to or on behalf of a member;
- (v) termination pay unless included pursuant to 19-20-716;
- (vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);
- (vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;
- (viii) incentive or bonus payments paid to a member that are not part of a series of annual payments; or
- (ix) *a professional stipend paid pursuant to 20-4-134; or*
- ~~(ix)~~(x) any similar payment or reimbursement made to or on behalf of a member by an employer.

(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.

- (9) "Employer" means:
 - (a) the state of Montana;
 - (b) a public school district, as provided in 20-6-101 and 20-6-701;
 - (c) the office of public instruction;
 - (d) the board of public education;
 - (e) an education cooperative;
 - (f) the Montana school for the deaf and blind, as described in 20-8-101;
 - (g) the Montana youth challenge program, as defined in 10-1-101;
 - (h) a state youth correctional facility, as defined in 41-5-103;
 - (i) the Montana university system;
 - (j) a community college; or
 - (k) any other agency, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.
- (10) "Full-time service" means service that is:
 - (a) at least 180 days in a fiscal year;
 - (b) at least 140 hours a month during at least 9 months in a fiscal year; or
 - (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.

(11) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(12) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.

(13) "Member" means a person who has an individual account in the annuity savings account. Unless otherwise specified, "member" refers to a tier one member or a tier two member. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(14) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

(15) "Normal retirement age" means an age no earlier than 60 years of age.

(16) "Part-time service" means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(17) "Position reportable to the retirement system" means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(18) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(19) "Retired", "retired member", or "retiree" means a person who is considered in retired member status under the provisions of 19-20-810.

(20) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

(21) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(22) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(23) "Service" means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(24) "Termination" or "terminate" means that the employment relationship between the member and the member's employer has been terminated as required in 19-20-810.

(25) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(26) "Tier one member" means a person who became a member before July 1, 2013, and who has not withdrawn the member's account balance.

(27) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after withdrawing the member's account balance, became a member again after July 1, 2013.

(28) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

(29) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with

the board, that contains all the required information, including documentation that the board considers necessary.”

Section 2. Section 20-4-134, MCA, is amended to read:

“20-4-134. Professional stipends for teachers certified by national board for professional teaching standards. (1) Pursuant to subsection ~~(4)~~; ~~a one-time~~ (5), an annual stipend of ~~\$3,000~~ up to \$1,500 must be provided to each teacher who obtains certification holds a current certificate from the national board for professional teaching standards if the teacher is:

(a) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered by national board certification assessment;

(b) certified to teach in Montana under the provisions of 20-4-103; and

(c) a full-time employee of:

(i) a Montana public school district, as defined in 20-6-101;

(ii) an education cooperative, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; or

(iv) a state youth correctional facility, as defined in 41-5-103.

(2) An annual stipend of up to \$2,500 must be provided to each teacher who meets the criteria for the stipend in subsection (1) and who has an instructional assignment in a school identified as:

(a) a school in a high poverty area eligible to participate in the community eligibility provision under Public Law 111-296; or

(b) a school impacted by a critical quality educator shortage pursuant to 20-4-503.

~~(2)(3)~~ A teacher ~~is~~ becomes eligible for the stipend in subsection (1) in the school year beginning July 1 after the teacher obtains certification or recertification from the national board for professional teaching standards.

~~(3)(4)~~ By March 1, the superintendent of public instruction shall distribute stipend payments to each eligible teacher any entity listed in subsections (1)(c)(i) through (1)(c)(iv) that employs an eligible teacher.

~~(4)(5)~~ The obligation for funding a portion of the professional stipend stipends is an obligation of the state. This section may not be construed to require a school district to provide a stipend its matching portion of a stipend to a qualifying teacher without a payment from the state to the district. If the funding for professional stipends is less than the total amount for which Montana teachers qualify, the superintendent of public instruction shall prorate the funding to the districts in a manner that provides the same amount of stipend to each qualifying teacher. If the money appropriated for the stipends is not enough to provide the full amount for each eligible teacher, the superintendent of public instruction shall request the state budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of the stipends.

(6) (a) For a stipend under subsection (1), the state shall pay \$500 and another \$1 for each \$1 contributed by the teacher’s school district, up to a maximum state contribution of \$1,000.

(b) For a stipend under subsection (2), the state shall pay \$1,000 and another \$2 for each \$1 contributed by the teacher’s school district, up to a maximum state contribution of \$2,000.”

Section 3. Effective date. [This act] is effective July 1, 2017.

Section 4. Applicability. [This act] applies to teachers who obtain certification or recertification from the national board for professional teaching standards on or after July 1, 2017.

Approved April 4, 2017

CHAPTER NO. 151

[HB 137]

AN ACT GENERALLY REVISING LAWS PERTAINING TO THE STATE AUDITOR; GENERALLY REVISING INSURANCE LAWS; GENERALLY REVISING SECURITIES LAWS; ALLOWING CAPTIVE INSURANCE MERGERS; REMOVING CITATIONS TO INSURE MONTANA; REMOVING SUNSET PROVISIONS IN THE SECURITIES ACT APPLYING TO THE SECURITIES RESTITUTION FUND; ADDING HEALTH SERVICE CORPORATIONS AND HEALTH MAINTENANCE ORGANIZATIONS TO PROVISIONS APPLYING TO SUPERVISION, REHABILITATION, AND LIQUIDATION; CLARIFYING INSURERS' SECURITY DEPOSIT REQUIREMENTS; ADDING DOMESTIC MUTUAL INSURERS AND DOMESTIC STOCK INSURERS TO INSOLVENCY ASSET DISTRIBUTION; REQUIRING A PLAN OF DISSOLUTION FOR A DOMESTIC MUTUAL INSURER; ALLOWING CORPORATE SUBSIDIARIES FOR FARM MUTUAL INSURERS; ALLOWING STATE MUTUAL INSURERS TO CHANGE STATUS TO COUNTY MUTUAL INSURERS; REVISING THE DEFINITION OF "PUBLIC ADJUSTERS"; AMENDING LAWS PERTAINING TO INSURANCE PRODUCER EXCHANGE CONTINUING EDUCATION; AMENDING LIFE INSURANCE LAWS PERTAINING TO MORTUARIES; AMENDING NOTICE REQUIREMENTS PERTAINING TO INSURERS COVERED UNDER HIPAA; CLARIFYING TERMINOLOGY FOR UNFAIRLY DISCRIMINATORY RATES; AMENDING LAWS PERTAINING TO MEDICARE SUPPLEMENT POLICY SOLICITATIONS; AMENDING CAPTIVE INSURER BUSINESS ENTITY LAWS; REQUIRING QUARTERLY FINANCIAL STATEMENTS TO BE FILED; REVISING REFERENCES TO PHYSICIANS AND HEALTH CARE PROVIDERS; REVISING UTILIZATION REVIEW PLAN SUBMISSIONS TO THE INSURANCE COMMISSIONER; REVISING DATES FOR EXTERNAL REVIEWS; AMENDING LAWS PERTAINING TO SPECIAL CLASSIFICATIONS AND EXPERIENCE RATING FOR STATE FUND; REPEALING LAWS RELATING TO A SMALL BUSINESS HEALTH INSURANCE POOL; AMENDING SECTIONS 15-30-2110, 15-30-2618, 15-31-511, 30-10-104, 30-10-115, 30-10-209, 33-1-502, 33-2-1304, 33-2-1363, 33-3-453, 33-3-601, 33-3-602, 33-3-603, 33-4-103, 33-4-204, 33-17-102, 33-17-243, 33-17-301, 33-18-301, 33-18-609, 33-19-105, 33-19-202, 33-22-157, 33-22-301, 33-22-906, 33-22-1815, 33-22-1816, 33-28-101, 33-28-105, 33-28-109, 33-28-306, 33-30-102, 33-31-111, 33-31-211, 33-31-212, 33-31-401, 33-32-102, 33-32-103, 33-32-403, 33-32-410, 33-32-412, 33-32-417, 33-32-423, 35-1-217, 35-1-931, 35-1-932, 35-2-119, 35-2-720, 35-2-721, 45-6-301, 53-4-1004, AND 53-6-1201, MCA; REPEALING SECTIONS 15-30-2368, 15-31-130, 33-22-2001, 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, 33-22-2008, 33-22-2009, 53-2-216, AND 53-2-217, MCA; AMENDING SECTION 16, CHAPTER 58, LAWS OF 2011; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Captive mergers. (1) A merger between captive stock insurers must meet the requirements of 33-3-217 and 33-28-105, except that the commissioner may provide notice to the public of the proposed merger prior

to approval or disapproval of the merger in place of holding a hearing, at the commissioner's discretion.

(2) A merger between captive mutual insurers must meet the requirements of 33-3-218 and 33-28-105, except that the commissioner may provide notice to the public of the proposed merger prior to approval or disapproval of the merger in place of holding a hearing, at the commissioner's discretion.

Section 2. Section 15-30-2110, MCA, is amended to read:

"15-30-2110. Adjusted gross income. (1) Subject to subsection (14), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability as determined under subsection (15);

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

~~(r)~~ that part of the refundable credit provided in ~~33-22-2006~~ that reduces Montana tax below zero;

~~(s)~~^(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163; and

~~(t)~~^(s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the

Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state as provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(16) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection ~~(2)(t)~~ (2)(s) terminates December 31, 2023--sec. 33, Ch. 457, L. 2015.)"

Section 3. Section 15-30-2618, MCA, is amended to read:

"15-30-2618. Confidentiality of tax records. (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (8) and (9) of this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630.

(4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing separately on the same return. The information being provided to the spouse or reported on the return, including subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and the taxpayer filed the return using a joint filing status for that tax year.

(5) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$500. If the offender is an officer or employee of the state, the offender must be dismissed from office or employment and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

(7) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(8) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(9) On written request to the director or a designee of the director, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-2616, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-430, provided that notice to the applicant has been given as provided in 15-70-430. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

~~(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20;~~

~~(i)(h)~~ to the department of commerce tax information about a taxpayer whose debt is assigned to the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The information provided to the department of commerce must be used for the purposes of preventing and detecting fraud or abuse and determining eligibility for grants or loans.

~~(j)(i)~~ to the superintendent of public instruction information required under 20-9-905. (Subsection ~~(9)(j)~~ ~~(9)(i)~~ terminates December 31, 2023--sec. 33, Ch. 457, L. 2015.)”

Section 4. Section 15-31-511, MCA, is amended to read:

“15-31-511. Confidentiality of tax records. (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

~~(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.~~

(4) On written request to the director or a designee of the director, the department shall:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1);

(b) provide corporate income tax and alternative corporate income tax information, including any information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111. The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(c) provide to the department of commerce tax information about a taxpayer whose debt is assigned to the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The information provided to the department of commerce must be used for the purposes of preventing and detecting fraud or abuse and determining eligibility for grants or loans.

(d) furnish to the superintendent of public instruction information required under 20-9-905.

(5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or public employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public

office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction. (Subsection (4)(d) terminates December 31, 2023--sec. 33, Ch. 457, L. 2015.)”

Section 5. Section 30-10-104, MCA, is amended to read:

“30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 and 30-10-211 do not apply to any of the following securities:

(1) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of those entities. However, 30-10-202 through 30-10-207 and 30-10-211 apply to a security issued by any of those entities that is payable solely from payments to be received in respect to property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise unless the enterprise or any security of which it is the issuer is within any of the exemptions listed in subsections (2) through (15).

(2) any security issued or guaranteed by Canada, a Canadian province, a political subdivision of a province, or an agency or corporate or other instrumentality of one or more of those entities or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by a bank organized under the laws of the United States or a bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by a federal savings and loan association or a building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by a railroad, other common carrier, public utility, or holding company that is:

(a) subject to the jurisdiction of the ~~interstate commerce commission~~ *federal surface transportation board*;

(b) a registered holding company under the Energy Policy Act of 2005 or a subsidiary of a registered holding company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province. A security referred to under this subsection (6)(d) includes equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by the railroad or public utility would be exempt under this subsection (6)(d).

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed an authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(b) a class of the issuer’s securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been registered for the 3 years immediately preceding the offering date;

(c) the issuer or a significant subsidiary has not had a material default during the last 7 years, or during the issuer's existence if that period is less than 7 years, in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities, has had for its last fiscal year consolidated net income, before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d), means the most recent year for which audited financial statements are available provided that the statements cover a fiscal period that ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and rights including the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on that date there are at least 750,000 of the shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within the 20-day period;

(9) any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for the current transaction and that evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of the paper that is likewise limited or any guarantee of the paper or of any renewal when the commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner, any other security of the same issuer that is of senior or substantially equal rank, any security called for by subscription

rights or warrants listed or approved for listing as provided in this subsection, or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner, any other security of the same issuer that is of senior or substantially equal rank, any security called for by subscription rights or warrants listed or approved for listing as provided in this subsection, or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state;

(15) any security for which an offer or sale is not directed to or received by a person in this state when the issuer does not maintain a place of business in the state.”

Section 6. Section 30-10-115, MCA, is amended to read:

“30-10-115. Deposits to general fund – exceptions. (1) Except as provided in subsection (2), all fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter must be deposited in the general fund.

(2) (a) All notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue fund in an account to the credit of the state auditor’s office. The funds allocated by this subsection (2)(a) to the state special revenue account may be used only to defray the expenses of the state auditor’s office in discharging its administrative and regulatory powers and duties in relation to notice filing under 30-10-209(1)(d) and examinations.

(b) Any fees in excess of the amount required for the purposes listed in subsection (2)(a) must be deposited in the general fund.

(c) ~~From March 7, 2013, through June 30, 2017, On or after July 1, 2019,~~ 4.5% of the total fees collected annually under 30-10-209(1)(b) must be deposited in the securities restitution assistance fund provided for in 30-10-1004. The remainder must be deposited in the general fund. *On or after July 1, 2021, all fees collected annually under 30-10-209(1)(b) must be deposited in the general fund.* ~~On or after July 1, 2017, all fees collected annually under 30-10-209(1)(b) must be deposited in the general fund.”~~

Section 7. Section 30-10-209, MCA, is amended to read:

“30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of \$200 for the first \$100,000 of initial issue or portion of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal

fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than \$200 or more than \$1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. The issuer shall pay a fee of \$50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson who is registered as an investment adviser representative with a broker-dealer registered as an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is \$200 for the initial notice filing and \$200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is \$50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(6) (a) Except as provided in subsection (6)(b), all fees, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund.

(b) *From March 7, 2013, through June 30, 2017, the From March 7, 2013, through June 30, 2021, the fees collected under subsection (1)(b), the notice filing fees provided for in subsection (1)(d), and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2). On or after July 1, 2021, the notice filing fees provided for in subsection (1)(d) and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2). On or after July 1, 2017, the notice filing fees provided for in subsection (1)(d) and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2)."*

Section 8. Section 33-1-502, MCA, is amended to read:

“33-1-502. Grounds for disapproval. The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval of a form only if the form:

(1) is in any respect in violation of or does not comply with ~~this code~~ *the laws of this state*;

(2) contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions that deceptively affect the risk purported to be assumed in the general coverage of the contract, including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner;

(3) has any title, heading, or other indication of its provisions that is misleading;

(4) is printed or otherwise reproduced in a manner that renders any provision of the form substantially illegible;

(5) contains any provision that violates the provisions of 49-2-309.”

Section 9. Section 33-2-1304, MCA, is amended to read:

“33-2-1304. To whom proceedings may be applied. The proceedings authorized by this part may be applied to:

(1) all insurers who are doing or have done insurance business in this state and against whom claims arising from that business may exist now or in the future;

(2) all insurers who purport to do an insurance business in this state;

(3) all insurers who have insureds resident in this state;

(4) all other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(5) all nonprofit service plans, ~~and all fraternal benefit societies and beneficial societies, health service corporations, and health maintenance organizations; or and~~

(6) all title insurance companies.”

Section 10. Section 33-2-1363, MCA, is amended to read:

“33-2-1363. Domiciliary liquidator’s proposal to distribute assets.

(1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section must be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) The proposal must at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in 33-2-1371, class 1;

(b) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(c) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled to a disbursement;

(d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within

the priorities established in 33-2-1371 in accordance with the priorities. A bond may not be required of the association.

(e) a full report to be made by each association to the liquidator accounting for all assets disbursed to the association, all disbursements made from the assets, any interest earned by the association on the assets, and any other matter that the court may direct;

(f) *compliance with Title 33, chapter 3, part 6, if the insurer being liquidated is a domestic stock insurer or a domestic mutual insurer.*

(3) The liquidator's proposal must provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made by the associations for which the associations could assert a claim against the liquidator and must provide that if the assets available for disbursement from time to time do not equal or exceed the amount of claim payments made or to be made by the association, then disbursements must be in the amount of available assets.

(4) The liquidator's proposal must, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating the associations.

(5) Notice of the application must be given to the association in each of the states and to the commissioners of insurance of each of the states. Any notice must be considered to have been given when deposited in the United States certified mail, first-class postage prepaid, at least 30 days prior to submission of the application to the court. Action on the application may be taken by the court if the required notice has been given and if the liquidator's proposal complies with subsections (2)(a) and (2)(b)."

Section 11. Section 33-3-453, MCA, is amended to read:

"33-3-453. Deposit of securities by insurance companies. (1) Securities qualified for deposit under 33-3-450 through 33-3-453 may be deposited with a clearing corporation or held in the federal reserve book-entry system. **Securities deposited**

(2) *An insurance company that is using securities to help meet the deposit requirements of Title 33, chapter 2, parts 1 and 6, and depositing those securities with a clearing corporation or held holding the securities in the federal reserve book-entry system:*

(a) ~~may not be withdrawn by the insurance company withdraw the securities without the approval of the commissioner; and~~

~~(2)(b) An insurance company holding securities in the manner provided for in this section shall provide to the commissioner evidence issued by its custodian or member bank through which the insurance company has deposited the securities in a clearing corporation or through which the securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian, other direct participant, or member bank and that the records of the custodian, other direct participant, or member bank reflect that the securities are held subject to the order of the commissioner."~~

Section 12. Section 33-3-601, MCA, is amended to read:

"33-3-601. Voluntary dissolution of domestic insurers -- plan of dissolution. (1) At least 60 days before ~~an~~ a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under 35-1-932 or voluntarily dissolves under 35-1-931, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the

submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~35-1-931 through 35-1-935~~ *Title 35, chapter 1, part 9*, except that 35-1-938(4) does not apply. The papers required by 35-1-931 through 35-1-935 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-1-217 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under *Title 33, chapter 2, part 13, of this title*.

(2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13."

Section 13. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under ~~35-1-931 and 35-1-932~~ *Title 35, chapter 1, part 9, or Title 35, chapter 2, part 7*, apply to the commissioner to have the liquidation continued under the commissioner's supervision. Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 14. Section 33-3-603, MCA, is amended to read:

"33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under 35-1-934 or 35-2-724, the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner."

Section 15. Section 33-4-103, MCA, is amended to read:

"33-4-103. Corporate powers in general. (1) An insurance corporation formed under this chapter or existing on January 1, 1961, and of a type which might be formed under this chapter shall have the same capacity to act possessed by individuals but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.

(2) Without affecting the authority contained in subsection (1) above, every such corporation shall have the following corporate powers:

(a) to have succession by its corporate name for the period stated in its articles;

(b) to sue and be sued in its corporate name;

(c) to adopt, use, and alter a corporate seal;

(d) to acquire, hold, sell, use, dispose of, pledge, or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation;

(e) to transact insurance;

(f) to conduct its affairs through its directors, officers, employees, insurance producers, and representatives thereunto duly authorized;

(g) to make bylaws not inconsistent with law for the exercise of its corporate powers, the management, regulation, and government of its affairs and property, including but not limited to calling and holding of meetings of its directors or members, and to modify or amend such bylaws;

(h) to exercise, subject to law and the express provisions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in such articles;

(i) to dissolve and wind up or be dissolved and wound up in the manner provided by law.

(3) An insurance corporation formed under this chapter may also form a subsidiary entity for the purpose of acting as an insurance producer, transacting insurance underwritten by other insurers. The subsidiary entity shall comply with the licensing requirements of chapter 17, as well as all other laws that apply to insurance producers. Funds used by an insurance corporation formed under this chapter for a subsidiary entity insurance producer are considered investments but are exempt from the requirements of 33-4-403.

Section 16. Section 33-4-204, MCA, is amended to read:

“33-4-204. Amendment of articles – change from county mutual insurer to state mutual insurer of status. (1) A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting called for that purpose, amend its articles of incorporation to extend its corporate duration or any other particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation.

(2) (a) A county mutual insurer may change its status to that of a state mutual insurer by amending its articles of incorporation pursuant to the requirements of this section.

(b) A county mutual insurer that changes its status to that of a state mutual insurer shall conform with all requirements for a state mutual insurer under this chapter upon its articles of amendment being certified by the commissioner, ~~including the requirements of 33-4-206(2) and 33-4-401(1).~~

(3) (a) A state mutual insurer may change its status to that of a county mutual insurer by amending its articles of incorporation pursuant this section.

(b) A state mutual insurer that changes its status to that of a county mutual insurer shall conform with all requirements for a county mutual insurer under this chapter upon its articles of amendment being certified by the commissioner.

~~(3)~~(4) The commissioner shall review the amended articles for compliance with this title. The amended articles of incorporation may be signed only by the president and secretary of the corporation and attested by the corporate seal. Notice of the proposed amendment must be contained in the notice of the annual or special meeting.”

Section 17. Section 33-17-102, MCA, is amended to read:

“33-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer;

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(v) claims examiner as defined in 39-71-116.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster or a public adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(5) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.

(7) "Exchange" means a health benefit exchange established by the state of Montana or an exchange established by the United States department of health and human services in accordance with 42 U.S.C. 18031.

(8) "Home state" means the District of Columbia or any state or territory of the United States in which a person licensed under this chapter maintains a principal place of residence or a principal place of business.

(9) "Individual" means a natural person.

(10) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(11) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

(12) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(13) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

(14) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(15) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

(16) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(17) "Lines of authority" means any kind of insurance as defined in Title 33.

(18) "Navigator" means a person certified by the commissioner under 33-17-241 and selected to perform the activities and duties identified in 42 U.S.C. 18031, et seq.

(19) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

(20) "Person" means an individual or a business entity.

(21) (a) "Public adjuster" means an adjuster ~~employed~~ *retained* by and representing the interests of the insured.

(b) *The term does not include a person who provides an estimate of work to an insurer on behalf of an insured as long as the insured is notified of all communications between the person and the insurer related to the estimates.*

(22) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

(23) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(24) "Suspend" means to bar the use of a person's license for a period of time."

Section 18. Section 33-17-243, MCA, is amended to read:

"33-17-243. Producer exchange training ~~and continuing education~~ certification for exchange sales. (1) A producer may not sell, solicit, or negotiate insurance through an exchange on or after October 1, 2013, without first completing the initial producer exchange training and certification program provided for in this section and ~~subsequently completing continuing education in every 24-month period~~, as prescribed and approved by the commissioner.

(2) ~~The continuing education required under this section must be counted toward the total number of hours required in 33-17-1203.~~

(3)(2) The producer exchange training and certification program and the continuing education courses required in this section must consist of topics related to health insurance offered within an exchange, including but not limited to:

(a) the levels of coverage provided in an exchange;

(b) the eligibility requirements for individuals to purchase insurance through an exchange;

(c) the eligibility requirements for employers to make insurance available to their employees through a small business health options program;

(d) the individual eligibility requirements for medicaid and the healthy Montana kids plan, as provided in Title 53; and

(e) the use of enrollment forms used in an exchange."

Section 19. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license -- qualifications -- catastrophe adjustments -- education and examination exemption. (1) ~~An individual~~ *A person* may not act as or purport to be an adjuster in this state unless the *individual person* holds an adjuster license. ~~An individual~~ *A person* shall apply to the commissioner for an adjuster license in a form approved by the commissioner. The commissioner shall issue the license to ~~individuals~~ *persons* qualified to be licensed under this section.

(2) To be licensed as an *individual* adjuster, the applicant:

(a) must be an individual 18 years of age or older;

(b) (i) must be a resident of Montana or a resident of another state that permits residents of Montana regularly to act as adjusters in the other state; or

(ii) if not a resident of this state, shall designate a home state in which the adjuster does not maintain a place of business or residence if:

(A) the adjuster's principal state of business or residence does not offer adjuster licensure; and

(B) the adjuster qualifies for the license as if the adjuster were a resident of the designated home state;

(c) except as provided in subsection (4), shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation;

(e) shall submit to a licensing background examination that meets the requirements provided in 33-17-220; and

(f) shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records

pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A business entity, whether or not organized under the laws of this state, may be licensed under this section if each individual who is to exercise the license powers is separately licensed or is named in the business entity license and is qualified for an individual license under this section.

(4) (a) Subject to the provisions of subsection (4)(b), an individual who applies for a nonresident license under this section in this state and who was previously licensed in another state may not be required to complete any preclicensing education or examination requirements.

(b) The exemption in subsection (4)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and the other state issues a certification or the state's database records indicate that, at the time of the cancellation, the individual was in good standing in that state.

(5) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(6) A license issued under this section continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(7) For purposes of this section, "adjuster" includes adjusters and public adjusters as defined in 33-17-102."

Section 20. Section 33-18-301, MCA, is amended to read:

"33-18-301. Prohibited relations with mortuaries. (1) A life insurer and its board of directors, officers, employees, or representatives that sell any life insurance, other than funeral insurance as defined in 33-20-1501(1)(c)(ii), may not own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment in Montana.

(2) (a) A life insurer may not contract or agree with any funeral director, mortician, or undertaker that the funeral director, mortician, or undertaker shall conduct the funeral or be named beneficiary of any person insured by the insurer.

(b) ~~This subsection (2) does not prohibit~~ A life insurer *may not from selling, soliciting, or negotiating sell, solicit, or negotiate life insurance, except stand-alone funeral insurance, as defined provided in 33-20-1501(1)(c)(ii), through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker if the funeral director, mortician, undertaker or employee of a mortuary or undertaker, through whom the sale, solicitation, or negotiation occurs, is an insurance producer licensed and qualified under 33-17-214.*

(c) A life insurer that sells, solicits, or negotiates funeral insurance, as defined in 33-20-1501(1)(c)(ii), through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker shall comply with the provisions of 33-20-1501 and 33-20-1502.

(3) A funeral insurance policy or certificate and any solicitation material for the policy must comply with 33-20-1501.

(4) An attempt by the insurer or its representative to require the insured to designate a specific beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker, constitutes a violation of this section punishable as a misdemeanor pursuant to subsection (5).

(5) *A funeral director, mortician, or undertaker or any employee of a mortuary or undertaker who seeks to sell, solicit, or negotiate funeral insurance shall comply with this code, including the requirements of Title 33, chapter 17, and Title 33, chapter 20, part 15.*

(5)(6) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both.”

Section 21. Section 33-18-609, MCA, is amended to read:

“33-18-609. Filing. (1) Insurers that use insurance scores to underwrite and or rate risks shall file their scoring models or other scoring processes with the commissioner. A third party may file scoring models on behalf of insurers.

(2) A filing relating to credit information is considered a trade secret under the laws of this state.”

Section 22. Section 33-19-105, MCA, is amended to read:

“33-19-105. Exemption based on federal standards for privacy of individually identifiable health information – notice to commissioner required – rules. (1) The obligations imposed under this chapter do not

apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information or security standards for the protection of electronic health information as to any use or disclosure of personal information that is covered under the HIPAA privacy and security regulations, except for the following provisions:

(a) A notice of insurance information practices described as a notice of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) The reasons for an adverse underwriting decision must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why the licensee is a HIPAA-covered entity.

(4) A licensee may claim an exemption only for those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A business associate, as defined in the HIPAA privacy regulations, 45 CFR 160.103, that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activity of the business associate that falls outside of the scope of that agreement is subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, 2011:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy and security regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption.”

Section 23. Section 33-19-202, MCA, is amended to read:

“33-19-202. Notice of insurance information practices – delivery of notice. A licensee shall provide a clear and conspicuous notice of information practices that accurately reflects its privacy policies and practices to individuals about whom personal information is collected and disclosed by the licensee in connection with insurance transactions as follows:

(1) (a) Except as provided in subsection (2), in the case of a policyholder or certificate holder, a notice must be delivered by an insurance institution:

(i) in the case of policies issued after July 1, 2001, no later than at the time of the delivery of the insurance policy or certificate, unless the notice delivered to the policyholder or certificate holder pursuant to subsection (5)(a) when the policyholder or certificate holder was an applicant is still accurate; *and*

(ii) at least annually, the 12-month period for which may be defined by the insurance institution and must be used consistently. The notice to certificate holders required in this subsection (1)(a)(ii) is not required if the insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder: *within 60 days after any material change, other than typographical, in the insurance institution’s privacy policies or practices*

(iii) in the case of a policy renewed after July 1, 2001, no later than the policy renewal date, except that notice is not required in connection with a policy renewal if a notice meeting the requirements of this section has been given within the previous 12 months.

(b) When a policyholder or certificate holder obtains a new insurance product or service or when a policy is reinstated and any notices already provided are no longer accurate with respect to the new product, service, or reinstatement, a new or revised and accurate notice must be delivered to the policyholder or certificate holder no later than the time that the product or service is provided by the licensee or at the time of reinstatement.

(2) (a) An insurance institution is not required to meet the requirements of this section with respect to certificate holders until the insurance institution has personally identifiable information regarding the certificate holder.

(b) Until the notice requirements of subsection (1) are met, a third-party administrator or other agent or representative of an insurance institution may not disclose personal information, except as allowed in 33-19-306(2).

(3) The notice required in subsection (1) must be in writing and must state:

(a) the categories of personal information that may be collected from persons other than the individual or individuals covered;

(b) if a licensee discloses personal or privileged information to a third party without an authorization pursuant to an exception in 33-19-306 or 33-19-307, a separate description of the categories of information and the categories of third parties to whom the licensee discloses personal information;

(c) the categories of personal information about a former policyholder or certificate holder that the licensee discloses pursuant to 33-19-306 and 33-19-307 and the categories of persons to whom the disclosure may be made;

(d) any disclosure that the licensee makes pursuant to section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(e) the licensee's policies and practices with respect to protecting the confidentiality and security of personal and privileged information.

(4) The following information must be contained in the initial notice delivered at the time of application and in any subsequent ~~annual~~ notice ~~if the policy renews periodically~~:

(a) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised;

(b) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons if the licensee collects or uses information from or discloses personal information to an insurance-support organization; and

(c) that an individual is entitled to receive, upon written request to the licensee, a record of any subsequent disclosures of medical record information, as described in 33-19-301, made by the licensee pursuant to 33-19-306 and 33-19-307.

(5) In the case of individuals who are not policyholders or certificate holders:

(a) except as provided in subsection (8), in the case of an applicant, an insurance institution shall provide a notice as described in subsection (3) when the applicant submits an application;

(b) for all other individuals, a notice must be given when a licensee seeks an authorization pursuant to 33-19-306(2) to make a disclosure that is not allowed by a disclosure exception provided for in 33-19-306(3) through (24) or 33-19-307. A notice given pursuant to this subsection (5)(b) may be in an abbreviated form and must state that:

(i) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(ii) the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(iii) a right of access and correction exists with respect to all personal information collected; and

(iv) the notice prescribed in subsection (3) must be furnished upon request. The abbreviated notice provided for in this subsection (5)(b) must explain a reasonable means by which an individual may obtain that notice.

(6) The obligations imposed by this section upon a licensee may be satisfied:

(a) by another licensee authorized to act on its behalf;

(b) by sending a notice to the primary policyholder of an individual policy or to the primary certificate holder.

(7) A licensee shall provide a notice required by this section so that an intended recipient can reasonably be expected to receive actual notice in writing or, if the intended recipient agrees, electronically, as follows:

(a) by hand-delivering a printed copy of the notice to the intended recipient;

(b) by mailing a printed copy of the notice to the last-known address of the individual separately or in a policy, billing, or other written communication; or

(c) for an individual who has agreed to conduct transactions electronically, as provided in applicable law, by posting the notice on the electronic site and requiring the individual to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(8) An insurance institution may provide the notice required in subsection (5)(a) telephonically if an application is submitted by telephone. A telephone notice under this subsection may be in abbreviated form as provided for in subsections (5)(b)(i) through (5)(b)(iv).

(9) A licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, the licensee shall refer the individual to state specific notice forms that may be used. Any national notice form must give individuals clear and conspicuous notice that when state law is more protective of individuals than federal privacy law, the licensee will protect information in accordance with state law.”

Section 24. Section 33-22-157, MCA, is amended to read:

“33-22-157. Standards for review – notice of deficiency. (1) (a) When reviewing a premium rate filing, the commissioner shall consider whether the proposed premium rate is excessive, inadequate, unjustified, or unfairly discriminatory. Rates may be considered excessive if they cause the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage. In order to determine if the rate is excessive, the commissioner shall consider whether:

- (i) the assumptions on which the rate increase is based are reasonable; and
- (ii) one or more of the assumptions is not supported by the evidence.

(b) Rates may be considered inadequate if the rate is unreasonably low for the coverage provided, and the commissioner may consider if the rate would endanger the solvency of the insurer or disrupt the insurance market in Montana.

(c) A rate increase may be considered unjustified if the health insurance issuer provides data or documentation in connection with the increase that is incomplete, inadequate, or otherwise does not provide a basis upon which the reasonableness of an increase may be determined.

(d) Rates may be considered unfairly discriminatory if they violate 33-18-206, 33-22-526, 49-2-309, or other applicable state laws prohibiting discrimination in health insurance.

(2) In order to determine whether the proposed premium rates for health insurance coverage are not excessive, inadequate, unjustified, or unfairly discriminatory, the commissioner may consider:

(a) the health insurance issuer’s financial position, including but not limited to surplus, reserves, and investment savings;

(b) historical and projected administrative costs and medical and hospital expenses, including medical trends;

(c) the historical and projected medical loss ratio;

(d) changes to covered benefits or health plan design, along with actuarial projections concerning cost savings or additional expenses related to those changes;

(e) changes in the health insurance issuer’s health care cost containment and quality improvement efforts following the health insurance issuer’s last rate filing for the same category of health plan;

(f) product development and startup costs, drug and other benefit costs or expenses, and product age and credibility;

(g) whether the proposed change in the premium rate is necessary to maintain the health insurance issuer’s solvency or to maintain rate stability and prevent excessive rate increases in the future;

- (h) historical and projected claims experience;
- (i) trend projections related to utilization and service or unit cost;
- (j) allocation of the overall rate increase to claims and nonclaims costs;
- (k) allocation of current and projected premium for each enrollee each month;
- (l) the 3-year history of rate increases for the product or group of products associated with the rate increase if the product is 3 years old or older and otherwise any available rate history;
- (m) employee and executive compensation data from the health insurance issuer's annual financial statements; and
- (n) any other applicable information identified in administrative rules adopted pursuant to Title 33, except that the administrative rules may not include by reference any provisions of Public Law 111-148 and Public Law 111-152 or any regulations promulgated under those laws.

(3) The commissioner shall review rate filings and, if applicable, shall provide a notice of deficiencies containing detailed reasons describing why the commissioner finds that the proposed premium rate is excessive, inadequate, unjustified, or unfairly discriminatory. The notice must be provided within 60 days of receipt of filing.

(4) Within 30 days after receiving a notice of deficiencies alleging that a proposed rate is excessive, inadequate, unjustified, or unfairly discriminatory, the insurer may amend its rate filing, request reconsideration based upon additional information, or, ~~unless the rate is unfairly discriminatory pursuant to subsection (1)(d), implement the proposed rate; unless the rate is unfairly discriminatory, pursuant to subsection (1)(d).~~

(5) At the end of the 30-day period described in subsection (4), if the insurer implements a rate that the commissioner has determined to be excessive, inadequate, or unjustified, ~~or unfairly discriminatory~~, the commissioner shall publish the finding on the commissioner's website indicating the commissioner's determination."

Section 25. Section 33-22-301, MCA, is amended to read:

"33-22-301. Coverage of newborn under disability policy. (1) Each policy of disability insurance or certificate issued must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants must be the same as provided by the policy for the other covered persons. However, ~~that~~ for newborn infants there may not be waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) A policy or certificate of insurance may not be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days."

Section 26. Section 33-22-906, MCA, is amended to read:

"33-22-906. Loss ratio standards and filing requirements -- limits on compensation. (1) Medicare supplement policies and certificates must return to policyholders or certificate holders benefits that are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to

establish minimum standards for loss ratios of medicare supplement policies and certificates on the basis of incurred claims experience or incurred health care expenses, where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. ~~For purposes of rules adopted pursuant to this section, medicare supplement policies and certificates issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as group policies.~~ Every entity providing medicare supplement insurance benefits to a resident of this state shall make premium adjustments:

(a) necessary to produce an expected loss ratio under the policy or certificate that meets the minimum loss ratio standards for medicare supplement policies and certificates as established by rule; and

(b) expected to result in a loss ratio at least as great as that originally anticipated by the entity when it established current premiums for the medicare supplement policy or certificate.

(2) The commissioner shall by rule establish the timing and manner of the premium adjustments. Every entity providing medicare supplement policies or certificates in this state shall annually file with the commissioner its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this part. An entity transacting medicare supplement insurance in this state may not adjust its rates more than twice a year and may not adjust its rates for the first year a policy is in force, except to allow for changes in federal laws or regulations relating to medicare. Each filing of rates and rating schedules must demonstrate that the actual and expected losses in relation to premiums complies with the requirements of this part.

(3) An entity may not provide compensation to its insurance producers that is greater than the renewal compensation that would be paid on an existing policy or certificate if:

(a) the existing policy or certificate were replaced by another policy or certificate with the same insurer and the new benefits are substantially similar to the benefits under the old policy or certificate; and

(b) the old policy or certificate was issued by the same insurer or insurance group.”

Section 27. Section 33-22-1815, MCA, is amended to read:

“33-22-1815. Qualifications for voluntary purchasing pool. A voluntary purchasing pool of disability insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance with the following provisions:

(1) It contains at least 51 eligible employees.

(2) It establishes requirements for membership. The voluntary purchasing pool shall accept for membership any small employers and may accept for membership any employers with at least 51 eligible employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may not exclude any small employers that otherwise meet the requirements for membership on the basis of claim experience, occupation, or health status.

(3) It holds an open enrollment period at least once a year during which new members can join the voluntary purchasing pool.

(4) It offers coverage to eligible employees of member employers and to the employees' dependents. Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).

(5) It does not assume any risk or form self-insurance plans among its members.

(6) (a) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool must rate the entire purchasing pool group as a whole and charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.

(b) ~~Except for the rates for the small business health insurance pool established in 33-22-2001, rates~~ *Rates* for voluntary purchasing pool groups must be set pursuant to the provisions of 33-22-1809.

(c) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool or by member employers.

(7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer.”

Section 28. Section 33-22-1816, MCA, is amended to read:

“33-22-1816. Commissioner powers and duties – application for registration – reporting insolvency. (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.

(2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof of fulfillment of the qualifications provided in 33-22-1815.

(3) Except as provided in subsection (5), on March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the previous calendar year to the commissioner so that the commissioner may determine:

- (a) whether the operation of the voluntary purchasing pool is fiscally sound;
- (b) whether the voluntary purchasing pool is bearing any risk; and
- (c) the number of individuals covered.

(4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.

(5) A voluntary purchasing pool may choose to operate on a fiscal year other than on the calendar year. A voluntary purchasing pool that establishes a fiscal year that is other than the calendar year shall provide the report required in subsection (3) to the commissioner within 60 days of the voluntary purchasing pool’s fiscal yearend.

~~(6) The commissioner may exempt the small business health insurance purchasing pool established in 33-22-2001 from the reporting requirements under subsection (3).”~~

Section 29. Section 33-28-101, MCA, is amended to read:

“33-28-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Affiliated company” means any company in the same corporate system as a parent, an industrial insured, or a member by virtue of common ownership, control, operation, or management.

(2) “Association” means any legal association of sole proprietorships or business entities that has been in continuous existence for at least 1 year unless the 1-year requirement is waived by the commissioner and the members of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer;

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(d) owns, controls, or holds with power to vote all of the outstanding ownership interests of an association captive insurance company organized as a limited liability company.

(3) "Association captive insurance company" means any company that insures risks of the members and the affiliated companies of members.

(4) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(5) "Branch captive insurance company" means any foreign captive insurance company authorized by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) "Branch operations" means any business operations of a branch captive insurance company in this state.

(7) (a) "Business entity" means a corporation, limited liability company, ~~partnership, limited partnership, limited liability partnership~~, or other legal entity formed by an organizational document.

(b) The term does not include a sole proprietor.

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or authorized under the provisions of this chapter.

(9) "Captive reinsurance company" means a captive insurance company authorized in this state that reinsures the risk ceded by any other insurer.

(10) "Captive risk retention group" means a captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.

(11) "Cash equivalent" means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(12) (a) "Controlled unaffiliated business entity" means a business entity or sole proprietorship:

(i) that is not in a parent's corporate system consisting of the parent and affiliated companies;

(ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and

(iii) whose risks are managed by a pure captive insurance company.

(b) The commissioner may promulgate rules that further define a controlled unaffiliated business entity.

(13) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified per-incident or aggregate limit established by the commissioner.

(14) "Foreign captive insurance company" means any captive insurance company formed under the laws of any jurisdiction other than this state.

(15) "Incorporated cell" means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.

(16) "Incorporated cell captive insurance company" means a protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.

(17) "Industrial insured" means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(c) who has at least 25 full-time employees.

(18) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(19) "Industrial insured group" means any group that meets either of the following:

(a) the group collectively:

(i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) the group is a captive risk retention group.

(20) "Member" means a sole proprietorship or business entity that belongs to an association.

(21) "Mutual insurer" means a business entity without capital stock and with a governing body elected by the policyholders.

(22) "Organizational document" means articles of incorporation, articles of organization, a ~~partnership agreement~~, a subscribers' agreement, a charter, or any other document that establishes a business entity.

(23) "Parent" means a sole proprietorship, business entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance company.

(24) "Participant" means a sole proprietorship or business entity and any affiliates that are insured by a protected cell captive insurance company in which the losses of the participant are limited through a participant contract to the participant's share of the assets of one or more protected cells identified in the participant contract.

(25) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

(26) "Protected cell" means a separate account established by a protected cell captive insurance company formed or authorized under the provisions of this chapter, in which an identified pool of assets and liabilities are segregated and insulated, as provided in this chapter, from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(27) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.

(28) "Protected cell captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or authorized under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

(29) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell captive insurance company.

(30) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

(31) "Sole proprietorship" means an individual doing business in a noncorporate form.

(32) "Special purpose captive insurance company" means a captive insurance company that is formed or authorized under this chapter that does not meet the definition of any other type of captive insurance company defined in this section or is formed by, on behalf of, or for the benefit of a political subdivision of this state.

(33) "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a protected cell captive insurance company."

Section 30. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A captive insurance company must be formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of its association or associations;

(c) organized as a reciprocal insurer under Title 33, chapter 5; or

(d) organized as a *manager-managed* limited liability company.

(3) A captive insurance company incorporated or organized in this state must be incorporated or organized by at least one incorporator or organizer who is a resident of this state.

(4) (a) In the case of a captive insurance company formed as a business entity and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers, directors, or managing members; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the organizational documents and shall return the draft to the proposed organizers, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft organizational documents, the commissioner shall forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state. A captive risk retention group must have a minimum of five directors.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state. A captive risk retention group formed as a limited liability company must have a minimum of five managers.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state. A captive risk retention group formed as a reciprocal insurer must have a minimum of five members of the subscribers' advisory committee.

(7) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in [section 1] and 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) (a) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the authorization and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

Section 31. Section 33-28-109, MCA, is amended to read:

"33-28-109. Suspension or revocation of certificate of authority. (1)

The certificate of authority of a captive insurance company doing insurance business in this state may be suspended by the commissioner for any of the following reasons:

- (a) insolvency or impairment of capital or surplus;
- (b) failure to meet and maintain the requirements of 33-28-104;
- (c) refusal or failure to submit an annual report, as required by 33-28-107, or any other report or statement required by law or by lawful order of the commissioner;
- (d) failure to comply with the provisions of its own charter, bylaws, or other organizational document;
- (e) failure to submit to examination or to perform any legal obligation as required by 33-28-108;
- (f) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;
- (g) failure to pay the tax provided for in 33-28-201; or
- (h) failure otherwise to comply with the laws of this state.

(2) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has committed any of the acts specified in subsection (1), the commissioner may suspend or revoke the company's certificate of authority if the commissioner considers it in the best interest of the public or the policyholders of the captive insurance company.

(3) *If the certificate of authority has not been terminated within the period of suspension, the company's certificate of authority may be reinstated if the commissioner finds that the causes of the suspension have been removed or that the insurer is otherwise in compliance with the requirements of this code."*

Section 32. Section 33-28-306, MCA, is amended to read:

"33-28-306. Conversion to or merger with reciprocal insurer. (1)

An association captive insurance company or industrial insured group formed as a stock or mutual insurer may be converted to or merged with a reciprocal insurer in accordance with the provisions of this section.

(2) A plan for conversion or merger must:

(a) be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and

(b) provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer.

(3) In order to convert to a reciprocal insurer, the conversion must be accomplished under a reasonable plan and procedure approved by the commissioner. The commissioner may not approve the plan unless it:

(a) provides for a hearing upon notice to the insurer, directors, officers, and stockholders or policyholders who have the right to appear at the hearing, unless the commissioner waives or modifies the requirements for the hearing;

(b) provides for the conversion of the existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests;

(c) (i) in the case of a stock insurer, is approved, by a majority of the shareholders who are entitled to vote and who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; or

(ii) in the case of a mutual insurer, by a majority of the voting interests of the policyholders who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; and

(d) meets the requirements of 33-28-105.

(4) If the commissioner approves a plan of conversion, the certificate of authority for the converting insurer must be amended to state that it is a reciprocal insurer. The conversion is effective and the corporate existence of the converting entity ceases to exist on the date on which the amended certificate is issued to the attorney-in-fact of the reciprocal insurer. The resulting reciprocal insurer shall notify the secretary of state of the conversion.

(5) ~~The commissioner may not approve a plan for a merger unless it:~~

~~(a) meets the requirements of:~~

~~(i) 33-3-217, with respect to the merger with a captive stock insurer; or~~

~~(ii) 33-3-218, with respect to the merger with a captive mutual insurer; and~~

~~(b) meets the requirements of 33-28-105."~~

Section 33. Section 33-30-102, MCA, is amended to read:

"33-30-102. Application of this chapter – construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, ~~part parts 13 and 19; Title 33, chapter 3, part 6;~~ Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, 22, and 32, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the

fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail.”

Section 34. Section 33-31-111, MCA, is amended to read:

“33-31-111. Statutory construction and relationship to other laws.

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, ~~part parts 13 and 19~~, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, *Title 33, chapter 3, part 6*, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, 33-22-706, Title 33, chapter 32[, and Title 33, chapter 40, part 1,] apply to health maintenance organizations. (Bracketed language in (7) terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)”

Section 35. Section 33-31-211, MCA, is amended to read:

“33-31-211. Annual statements – revocation for failure to file – penalty for false swearing. (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and content required by the commissioner. The statement must be completed in accordance with the national association of insurance commissioners’ annual statement instructions and the Accounting Practices and Procedures Manual of the national association of insurance commissioners. The statement must be verified by the oath of at least two principal officers of the health maintenance

organization. The commissioner may waive any verification under oath. ~~In addition, a health maintenance organization shall, unless it is operated by an insurer or a health service corporation as a plan, annually file on or before June 1 an audited financial statement. A health maintenance organization's audited financial statement must comply with rules adopted by the commissioner concerning audited financial statements.~~

(2) In addition to the annual statement and unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall file quarterly financial statements electronically with the national association of insurance commissioners. The dates for the electronic submission of the quarterly financial statements are March 1 for the first quarter, May 15 for the second quarter, August 15 for the third quarter, and November 15 for the fourth quarter.

~~(2)(3)~~ At the time of filing the annual statement required by March 1, the health maintenance organization shall pay the commissioner the fee for filing the statement as prescribed in 33-31-212. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, may impose a penalty of \$100, or may suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due. Each day that the insurer fails to file its annual statement constitutes a separate violation. The total penalty may not exceed \$1,000.

~~(3)(4)~~ The commissioner may, after notice and hearing, impose a fine not to exceed \$5,000 for each violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement *or quarterly financial statement* required by law that contains a material statement that is false.

~~(4)(5)~~ The commissioner may require reports considered reasonably necessary and appropriate to enable the commissioner to carry out the duties required of the commissioner under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan."

Section 36. Section 33-31-212, MCA, is amended to read:

"33-31-212. Fees. (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment to a certificate of authority, \$300;

(b) for filing an amendment to the organization documents that requires approval, \$25;

(c) for filing each annual statement, \$25;

(d) for annual continuation of certificate of authority, \$300.

(2) All fees, miscellaneous charges, fines, penalties, and those amounts received pursuant to 33-31-211~~(3)(4)~~ and 33-31-405 collected by the commissioner pursuant to this chapter and the rules adopted under this chapter must be deposited in the state special revenue fund to the credit of the state auditor's office."

Section 37. Section 33-31-401, MCA, is amended to read:

"33-31-401. Examination. (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 5 years. ~~The~~ *Similarly,* the commissioner shall examine a health maintenance organization operated by an insurer or

health service corporation as a plan at least once every 5 years. The provisions of 33-1-408 and 33-1-409 apply to examinations under this section.

(2) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the principals of the providers concerning their business.

(3) (a) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

(b) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (3)(a), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount paid is a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state and restored to the appropriate fund.

(4) In lieu of an examination, the commissioner may accept the report of an examination made by the commissioner of another state."

Section 38. Section 33-32-102, MCA, is amended to read:

"33-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Adverse determination", except as provided in 33-32-402, means:

(a) a determination by a health insurance issuer or its designated utilization review organization that, based on the provided information and after application of any utilization review technique, a requested benefit under the health insurance issuer's health plan is denied, reduced, or terminated or that payment is not made in whole or in part for the requested benefit because the requested benefit does not meet the health insurance issuer's requirement for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness or is determined to be experimental or investigational;

(b) a denial, reduction, termination, or failure to provide or make payment in whole or in part for a requested benefit based on a determination by a health insurance issuer or its designated utilization review organization of a person's eligibility to participate in the health insurance issuer's health plan;

(c) any prospective review or retrospective review of a benefit determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit; or

(d) a rescission of coverage determination.

(2) "Ambulatory review" means a utilization review of health care services performed or provided in an outpatient setting.

(3) "Authorized representative" means:

(a) a person to whom a covered person has given express written consent to represent the covered person;

(b) a person authorized by law to provide substituted consent for a covered person; or

(c) a family member of the covered person or the covered person's treating health care provider only if the covered person is unable to provide consent.

(4) "Case management" means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or otherwise complex health conditions.

(5) "Certification" means a determination by a health insurance issuer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care, and level of effectiveness.

(6) "Clinical peer" means a physician or other health care provider who:

(a) holds a nonrestricted license in a state of the United States; and

(b) is trained or works in the same or a similar specialty to the specialty that typically manages the medical condition, procedure, or treatment under review.

(7) "Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health insurance issuer to determine the necessity and appropriateness of health care services.

(8) "Concurrent review" means a utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or another inpatient or outpatient health care setting.

(9) "Cost sharing" means the share of costs that a covered member pays under the health insurance issuer's health plan, including maximum out-of-pocket, deductibles, coinsurance, copayments, or similar charges, but does not include premiums, balance billing amounts for out-of-network providers, or the cost of noncovered services.

(10) "Covered benefits" or "benefits" means those health care services to which a covered person is entitled under the terms of a health plan.

(11) "Covered person" means a policyholder, a certificate holder, a member, a subscriber, an enrollee, or another individual participating in a health plan.

(12) "Discharge planning" means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives after discharge from a facility.

(13) "Emergency medical condition" has the meaning provided in 33-36-103.

(14) "Emergency services" has the meaning provided in 33-36-103.

(15) "External review" describes the set of procedures provided for in Title 33, chapter 32, part 4.

(16) "Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health insurance issuer or its designated utilization review organization at the completion of the health insurance issuer's internal grievance process as provided in Title 33, chapter 32, part 3.

(17) "Grievance" means a written complaint or an oral complaint if the complaint involves an urgent care request submitted by or on behalf of a covered person regarding:

(a) availability, delivery, or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) claims payment, handling, or reimbursement for health care services; or

(c) matters pertaining to the contractual relationship between a covered person and a health insurance issuer.

(18) "Health care provider" or "provider" means a person, corporation, facility, or institution licensed by the state to provide, or otherwise lawfully providing, health care services, including but not limited to:

(a) a physician, *physician assistant*, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, licensed addiction counselor, or licensed professional counselor; and

(b) an officer, employee, or agent of a person described in subsection (18)(a) acting in the course and scope of employment.

(19) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(20) "Health insurance issuer" has the meaning provided in 33-22-140.

(21) "Network" means the group of participating providers providing services to a managed care plan.

(22) "Participating provider" means a health care provider who, under a contract with a health insurance issuer or with its contractor or subcontractor, has agreed to provide health care services to covered persons with the expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health insurance issuer.

(23) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, or any similar entity or combination of entities in this subsection.

(24) "Prospective review" means a utilization review conducted prior to an admission or a course of treatment.

(25) (a) "Rescission" means a cancellation or the discontinuance of coverage under a health plan that has a retroactive effect.

(b) The term does not include a cancellation or discontinuance under a health plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent that the cancellation or discontinuance is attributable to a failure to timely pay required premiums or contributions toward the cost of coverage.

(26) (a) "Retrospective review" means a review of medical necessity conducted after services have been provided to a covered person.

(b) The term does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

(27) "Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a health care provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

(28) "Stabilize" means, with respect to an emergency condition, to ensure that no material deterioration of the condition is, within a reasonable medical probability, likely to result from or occur during the transfer of the individual from a facility.

(29) (a) "Urgent care request" means a request for a health care service or course of treatment with respect to which the time periods for making a nonurgent care request determination could:

(i) seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

(ii) subject the covered person, in the opinion of a ~~physician~~ *physician health care provider* with knowledge of the covered person's medical condition, to severe

pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

(b) Except as provided in subsection (29)(c), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the health insurance issuer shall apply the judgment of a prudent lay person who possesses an average knowledge of health and medicine.

(c) Any request that a ~~physician~~ *health care provider* with knowledge of the covered person's medical condition determines is an urgent care request within the meaning of subsection (29)(a) must be treated as an urgent care request.

(30) "Utilization review" means a set of formal techniques designed to monitor the use of or to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinions, certification, concurrent review, case management, discharge planning, or retrospective review.

(31) "Utilization review organization" means an entity that conducts utilization review, other than a health insurance issuer performing a review for its own health plans."

Section 39. Section 33-32-103, MCA, is amended to read:

"33-32-103. Utilization review plan. An entity covered under the provisions of this chapter may not conduct a utilization review of health care services provided or to be provided to a patient covered under a contract or plan for health care services issued in this state unless that entity, at all times, maintains *and can provide at the commissioner's request* ~~with the commissioner~~ a current utilization review plan that includes:

(1) a description of review criteria, standards, and procedures to be used in evaluating proposed or delivered health care services that, to the extent possible, must:

(a) be based on nationally recognized criteria, standards, and procedures;

(b) reflect community standards of care, except that a utilization review plan for health care services under the medicaid program provided for in Title 53 need not reflect community standards of care;

(c) ensure quality of care; and

(d) ensure access to needed health care services;

(2) policies and procedures to ensure that a representative of the entity conducting the utilization review is reasonably accessible to patients and health care providers at all times;

(3) policies and procedures to ensure compliance with all applicable state and federal laws to protect the confidentiality of individual medical records;

(4) a copy of the materials designed to inform applicable patients and health care providers of the requirements of the utilization review plan; and

(5) any other information that may be required by the commissioner that is necessary to implement this chapter."

Section 40. Section 33-32-403, MCA, is amended to read:

"33-32-403. Notice of right to external review. (1) A health insurance issuer shall:

(a) notify the covered person or, if applicable, the covered person's authorized representative in writing of the covered person's right to request an external review pursuant to 33-32-410, 33-32-411, or 33-32-412; and

(b) include the appropriate statements and information described in subsection (4) at the same time that the health insurance issuer sends written notice of:

(i) an adverse determination upon completion of the health insurance issuer's utilization review process described in Title 33, chapter 32, part 2; and

(ii) a final adverse determination.

(2) The health insurance issuer shall include in the written notice required under subsection (1) the following, or substantially equivalent, language:

“We have denied your request for the provision of or payment for a health care service or course of treatment. You have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or level of effectiveness of the health care service or treatment you requested. You may exercise this right by submitting a request for external review to us [insert address and telephone number of the unit of the health insurance issuer that administers the external review program].”

(3) (a) The commissioner may prescribe the form and content of the notice required under this section.

(b) The notice must also include the following information:

(i) information sufficient to identify the claim involved, including the date of service, the health care provider, and, if applicable, the claim amount; and

(ii) a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning and the treatment code and its corresponding meaning. On receiving a request for a diagnosis or treatment code, the health insurance issuer shall provide the information as soon as practicable. A health insurance issuer may not consider a request for the diagnosis code and treatment information, in itself, to be a request for an external review as outlined in this part.

(4) The health insurance issuer shall include in the notice required under subsection (1) a statement that:

(a) for a notice related to an adverse determination:

(i) the covered person or, if applicable, the covered person's authorized representative may file a grievance under the health insurance issuer's internal grievance process provided for in 33-32-308;

(ii) if the health insurance issuer has not issued a written decision to the covered person or the covered person's authorized representative within the time period provided in 33-32-308 or 33-32-309, as applicable, after the date the covered person or the covered person's authorized representative files the grievance with the health insurance issuer and the covered person or the covered person's authorized representative has not requested or agreed to a delay, the covered person or the covered person's authorized representative may file a request for external review pursuant to 33-32-404. Under those conditions, the covered person or the covered person's authorized representative is considered to have exhausted the health insurance issuer's internal grievance process for the purposes of 33-32-307.

(iii) the covered person or the covered person's authorized representative may file a request for an expedited external review to be conducted pursuant to 33-32-411 or 33-32-412, as applicable, under the following circumstances:

(A) a review under 33-32-411 may be requested if the covered person has a medical condition with regard to which the timeframe for completion of an expedited grievance review of an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

(B) a review under 33-32-412 may be requested if the adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating health care provider certifies in writing that the recommended or requested health care service or treatment that is

the subject of the adverse determination would be significantly less effective if not promptly initiated. The ~~physician's health care provider's~~ certification must be submitted at the same time that the covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination. However, the independent review organization assigned to conduct the expedited external review is responsible for determining whether the covered person is required to complete the expedited review of the grievance before the expedited external review can begin.

(iv) informs the covered person or the covered person's authorized representative of the other exhaustion methods listed in 33-32-405;

(b) for a notice related to a final adverse determination, the covered person or the covered person's authorized representative may file a request for:

(i) an expedited external review under 33-32-411 if the covered person has a medical condition for which the timeframe for completion of a standard external review under 33-32-410 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function;

(ii) an expedited external review under 33-32-411 if the covered person has received emergency services and has not been discharged from a facility and the request concerns an admission, the availability of care, a continued stay, or a health care service for which the covered person received emergency services;

(iii) a standard external review under 33-32-412 if the denial of coverage was based on a determination that the recommended or requested health care service or treatment is experimental or investigational; or

(iv) an expedited external review under 33-32-412 if a covered person to which subsection (4)(b)(iii) applies attaches a written certification from the covered person's treating health care provider that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(5) In addition to the information to be provided in subsections (1) and (2), the health insurance issuer shall:

(a) include a description of both the standard and the expedited external review procedures as required by the disclosure requirements under 33-32-423, highlighting the provisions in the external review procedures that give the covered person or, if applicable, the covered person's authorized representative the opportunity to submit additional information and including any forms used to process an external review; and

(b) state that the commissioner's office is available to assist covered persons with the external review process. This statement must include the commissioner's contact information.

(6) Among the forms provided under this section, the health insurance issuer shall include an authorization form or other document approved by the commissioner that complies with the requirements of 45 CFR 164.508 and 33-19-206, by which the covered person, for purposes of conducting an external review under this part, authorizes the health insurance issuer and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person for the purposes of the external review."

Section 41. Section 33-32-410, MCA, is amended to read:

"33-32-410. Standard external review. (1) Within ~~4 months~~ *120 days* after the date of receipt of a notice of an adverse determination or a final adverse determination pursuant to 33-32-403, a covered person or, if applicable, the

covered person's authorized representative may file a request for an external review with the health insurance issuer.

(2) Within 5 business days after the date of receipt of the external review request, the health insurance issuer shall complete a preliminary review of the request to determine whether:

(a) the individual is or was a covered person in the health plan at the time the health care service or treatment was requested or, in the case of a retrospective review, was a covered person in the health plan at the time the health care service or treatment was provided;

(b) the health care service or treatment that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health plan but is not covered because of a determination by the health insurance issuer that the health care service or treatment does not meet the health insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness;

(c) the covered person has exhausted the health insurance issuer's internal grievance process as set forth in Title 33, chapter 32, part 3, or the covered person is exempt under 33-32-307(2); and

(d) the covered person or the covered person's authorized representative has provided all of the information and forms required to process an external review.

(3) (a) Within 1 business day after completion of the preliminary review, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative in writing as to whether:

(i) the request is complete; and

(ii) the request is eligible for external review.

(b) (i) If the request is not complete, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the information or materials that are needed to make the request complete.

(ii) If the request is not eligible for external review, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the reasons for the request's ineligibility.

(4) (a) The commissioner may specify the form for the health insurance issuer's notice of initial determination under subsection (3) and any supporting information to be included in the notice.

(b) The notice of initial determination provided under subsection (3) must include a statement informing the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the commissioner a health insurance issuer's initial determination that the external review request is ineligible for review.

(5) (a) If the commissioner receives an appeal under subsection (4), the commissioner may require a referral for external review, notwithstanding a health insurance issuer's initial determination that the request is ineligible.

(b) A determination by the commissioner under subsection (5)(a) must be based on the terms of the covered person's health plan and all applicable provisions of Title 33, chapter 32, parts 2 through 4.

(6) (a) If the request is eligible for external review, the health insurance issuer shall within 1 business day assign an independent review organization on a random basis, or using another method of assignment that ensures the independence and impartiality of the assignment process, from the list of approved independent review organizations compiled and maintained by the commissioner pursuant to 33-32-416 to conduct the external review.

(b) In making the assignment, the health insurance issuer shall consider whether an independent review organization is qualified to conduct the particular external review based on the nature of the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(c) The health insurance issuer shall also take into account other circumstances, including conflict of interest concerns pursuant to 33-32-417(4).

(7) The assigned independent review organization, in reaching its decision, is not bound by any decisions or conclusions reached during the health insurance issuer's utilization review process set forth in Title 33, chapter 32, part 2, or the health insurance issuer's internal grievance process set forth in Title 33, chapter 32, part 3.

(8) Within 1 business day of assigning an independent review organization pursuant to subsection (6), the health insurance issuer shall notify, in writing, the covered person or, if applicable, the covered person's authorized representative that the health insurance issuer initiated an external review.

(9) The health insurance issuer shall include in the notice provided to the covered person or, if applicable, the covered person's authorized representative a statement that the covered person or the covered person's authorized representative may submit in writing to the assigned independent review organization within 10 business days following the date of receipt of the notice provided pursuant to subsection (8) any additional information for the independent review organization to consider when conducting the external review. The independent review organization shall accept and consider information submitted within 10 business days after the date of receipt of the notice and may accept and consider additional information submitted after the 10 business days.

(10) Within 5 business days after assigning an independent review organization pursuant to subsection (6), the health insurance issuer or its designated utilization review organization shall provide to the assigned independent review organization the medical records, documents, and any information used in making the adverse determination or final adverse determination.

(11) Except as provided in subsection (12), failure by the health insurance issuer or its designated utilization review organization to provide the documents and information within the time specified in subsection (10) may not delay the conduct of the external review.

(12) (a) If the health insurance issuer or its designated utilization review organization fails to provide the documents and information within the time specified in subsection (10), the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(b) Within 1 business day after making a decision under subsection (12)(a), the independent review organization shall notify the covered person or, if applicable, the covered person's authorized representative as well as the health insurance issuer.

(13) If the provisions of subsection (12) do not apply, the assigned independent review organization shall review all of the information and documents received pursuant to subsection (10) and any other information submitted in writing to the independent review organization by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (9).

(14) On receipt of any information submitted by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (9), the assigned independent review organization shall within 1

business day after receipt forward the information to the health insurance issuer.

(15) On receipt of the information, if any, forwarded as provided in subsection (14), the health insurance issuer may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(16) Reconsideration by the health insurance issuer of its adverse determination or final adverse determination pursuant to subsection (15) may not delay or terminate the external review.

(17) The external review may be terminated only if the health insurance issuer decides, on completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(18) (a) Within 1 business day after making a decision to reverse its adverse determination or final adverse determination, as provided in subsection (17), the health insurance issuer shall notify the following in writing of its decision:

(i) the covered person or, if applicable, the covered person's authorized representative; and

(ii) the assigned independent review organization.

(b) The assigned independent review organization shall terminate the external review on receipt of the notice from the health insurance issuer sent pursuant to subsection (18)(a).

(19) In addition to the documents and information provided pursuant to subsection (10), the assigned independent review organization shall consider the following information and documents in making a decision, to the extent the information or documents are available:

(a) the covered person's medical records;

(b) the attending health care professional's recommendation;

(c) consulting reports from appropriate health care professionals and other documents submitted by the health insurance issuer, the covered person, the covered person's authorized representative, or the covered person's treating health care provider;

(d) the terms of coverage under the covered person's health plan with the health insurance issuer to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health plan with the health insurance issuer;

(e) the most appropriate practice guidelines, which must include generally accepted practice guidelines, evidence-based standards, or any other practice guidelines developed by the federal government or national or professional medical societies, boards, and associations;

(f) any applicable clinical review criteria developed and used by the health insurance issuer or its designated utilization review organization; and

(g) the opinion of the independent review organization's clinical peer after considering the provisions of subsections (19)(a) through (19)(f) to the extent the information or documents are available.

(20) Within 45 days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or the final adverse determination to:

(a) the covered person or, if applicable, the covered person's authorized representative; and

(b) the health insurance issuer.

(21) The independent review organization shall include in the notice sent pursuant to subsection (20):

- (a) a general description of the reason for the request for the external review;
- (b) the date the independent review organization received the assignment from the health insurance issuer to conduct the external review;
- (c) the time period over which the external review was conducted;
- (d) the date of the independent review organization's decision;
- (e) the principal reasons for the decision;
- (f) the rationale for the decision; and
- (g) references to the evidence or documentation, including the evidence-based standards, considered in reaching the decision.

(22) If a notice of a decision under subsection (20) reverses the adverse determination or final adverse determination, the health insurance issuer shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination."

Section 42. Section 33-32-412, MCA, is amended to read:

"33-32-412. External review of adverse determinations for experimental or investigational treatment – expedited external review. (1) Within ~~4 months~~ *120 days* after the date when a covered person or, if applicable, the covered person's authorized representative receives notice pursuant to 33-32-403 of an adverse determination or final adverse determination that involves a denial of coverage because a health insurance issuer determined that the health care service or treatment recommended or requested is experimental or investigational, the covered person or the covered person's authorized representative may file a request for an external review with the health insurance issuer.

(2) (a) A covered person or, if applicable, the covered person's authorized representative may make an oral request for an expedited external review of the adverse determination or final adverse determination pursuant to subsection (1) if the covered person's treating health care provider certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(b) (i) Upon receipt of a request for an expedited external review, the health insurance issuer shall immediately determine and notify the covered person or, if applicable, the covered person's authorized representative whether the request meets the review requirements of subsection (4).

(ii) The commissioner may specify the form for the health insurance issuer's notice of initial determination under subsection (2)(b)(i) and any supporting information to be included in the notice.

(iii) The notice of initial determination under subsection (2)(b)(i) must include a statement informing the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the commissioner a health insurance issuer's initial determination that the external review request is ineligible for review. The notice must also provide contact information for the commissioner's office.

(c) (i) The commissioner may determine that a request is eligible for external review under 33-32-404 or subsection (4) of this section and may require a referral for external review, notwithstanding a health insurance issuer's initial determination that the request is ineligible.

(ii) A determination by the commissioner under subsection (2)(c)(i) must be based on the terms of the covered person's health plan and all applicable provisions of Title 33, chapter 32, parts 2 through 4.

(d) (i) If the request is eligible for expedited external review, the health insurance issuer shall immediately assign an independent review organization

on a random basis, or using another method of assignment that ensures the independence and impartiality of the assignment process, from the list of approved independent review organizations compiled and maintained by the commissioner pursuant to 33-32-416 to conduct the external review.

(ii) In making the assignment, the health insurance issuer shall consider whether an independent review organization is qualified to conduct the particular external review based on the nature of the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(iii) The health insurance issuer shall also take into account other circumstances, including conflict of interest concerns pursuant to 33-32-417(4).

(e) Upon assigning an independent review organization, the health insurance issuer or its designated utilization review organization shall provide or transmit to the assigned independent review organization electronically, by telephone, by facsimile, or by any other available expeditious method all necessary documents and information used in making the adverse determination or final adverse determination.

(3) Upon receipt of a request for standard external review, the health insurance issuer shall, within 5 business days, determine whether the request meets the eligibility requirements of subsection (4).

(4) In accordance with the timeframes in subsections (2)(b) and (3), the health insurance issuer shall conduct and complete a preliminary review of the request to determine whether:

(a) the individual is or was a covered person in the health plan at the time the health care service or treatment was recommended or requested or, in the case of a retrospective review, was a covered person in the health plan at the time the health care service or treatment was provided;

(b) the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination:

(i) is a covered benefit under the covered person's health plan except for the health insurance issuer's determination that the service or treatment is experimental or investigational for a particular medical condition; and

(ii) is not explicitly listed as an excluded benefit under the covered person's health plan;

(c) the covered person's treating health care provider has certified that one of the following situations is applicable:

(i) standard health care services or treatments have not been effective in improving the condition of the covered person;

(ii) standard health care services or treatments are not medically appropriate for the covered person; or

(iii) there is no available standard health care service or treatment covered by the health insurance issuer that is more beneficial than the recommended or requested health care service or treatment described in subsection (4)(d);

(d) (i) the covered person's treating health care provider has recommended a health care service or treatment that the *physician health care provider* certifies, in writing, is likely to be more beneficial to the covered person, in the *physician's health care provider's* opinion, than any available standard health care services or treatments; or

(ii) a physician who is licensed, board-certified, or eligible to take the examination to become board-certified and is qualified to practice in the area of medicine appropriate to treat the covered person's condition has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment requested by the covered person who is subject to the adverse determination or final adverse determination is likely

to be more beneficial to the covered person than any available standard health care services or treatments; and

(e) the covered person has exhausted the health insurance issuer's internal grievance process provided in Title 33, chapter 32, part 3, or the covered person is exempt under 33-32-307(2).

(5) (a) Within 1 business day after completion of the preliminary review, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative in writing as to whether:

(i) the request is complete; and

(ii) the request is eligible for external review.

(b) (i) If the request is not complete, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the information or materials that are needed to make the request complete.

(ii) If the request is not eligible for external review, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the reasons for the request's ineligibility.

(6) (a) The commissioner may specify the form for the health insurance issuer's notice of initial determination under subsection (5) and any supporting information to be included in the notice.

(b) The notice of initial determination provided under subsection (5) must include a statement informing the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the commissioner a health insurance issuer's initial determination that the external review request is ineligible for review. The notice must also provide contact information for the commissioner's office.

(7) If a request for external review is determined eligible for external review, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative.

(8) (a) If the request is eligible for external review, the health insurance issuer shall within 1 business day assign an independent review organization on a random basis, or using another method of assignment that ensures the independence and impartiality of the assignment process, from the list of approved independent review organizations compiled and maintained by the commissioner pursuant to 33-32-416 to conduct the external review.

(b) In making the assignment, the health insurance issuer shall consider whether an independent review organization is qualified to conduct the particular external review based on the nature of the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(c) The health insurance issuer shall also take into account other circumstances, including conflict of interest concerns pursuant to 33-32-417(4).

(9) Within 1 business day of assigning an independent review organization pursuant to subsection (2)(d) or (8), the health insurance issuer shall notify in writing the covered person or, if applicable, the covered person's authorized representative that the health insurance issuer initiated an external review.

(10) The health insurance issuer shall include in the notice provided to the covered person or, if applicable, the covered person's authorized representative a statement that the covered person or, if applicable, the covered person's authorized representative may submit in writing to the assigned independent review organization within 10 business days following the date of receipt of the notice provided pursuant to subsection (9) any additional information for the independent review organization to consider when conducting the external

review. The independent review organization shall accept and consider information submitted within 10 business days after the date of receipt of the notice and may accept and consider additional information submitted after the 10 business days.

(11) Within 1 business day after the receipt of the notice of assignment to conduct the external review pursuant to subsection (9), the assigned independent review organization shall:

(a) select a clinical peer, or multiple peers if medically appropriate under the circumstances, to conduct the external review; and

(b) make a decision, based on the opinion of the clinical peers, to uphold or reverse the adverse determination or final adverse determination.

(12) (a) In selecting clinical peers to conduct the external review, the assigned independent review organization shall select physicians or other health care providers who meet the minimum qualifications described in 33-32-417 and who, through clinical experience in the past 3 years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment.

(b) The choice of the physicians or other health care providers to conduct the external review may not be made by the covered person, the covered person's authorized representative, if applicable, or the health insurance issuer.

(13) (a) In accordance with subsection (20), each clinical peer shall provide a written opinion to the assigned independent review organization on whether the recommended or requested health care service or treatment should be covered.

(b) In reaching an opinion, clinical peers are not bound by any decisions or conclusions reached during the health insurance issuer's utilization review process provided for in Title 33, chapter 32, part 2, or in the health insurance issuer's internal grievance process provided for in Title 33, chapter 32, part 3.

(14) (a) Within 5 business days after assigning an independent review organization pursuant to subsection (9), the health insurance issuer or its designated utilization review organization shall provide to the assigned independent review organization any documents and information considered in making the adverse determination or the final adverse determination.

(b) Except as provided in subsection (15), failure by the health insurance issuer or its designated utilization review organization to provide the documents and information within the time specified in subsection (14)(a) may not delay the conduct of the external review.

(15) (a) If the health insurance issuer or its designated utilization review organization fails to provide the documents and information within the time specified in subsection (14)(a), the assigned independent review organization may terminate the external review and decide to reverse the adverse determination or final adverse determination.

(b) Immediately upon making the determination under subsection (15)(a), the independent review organization shall notify the covered person or, if applicable, the covered person's authorized representative, the health insurance issuer, and the commissioner.

(16) On receipt of any information submitted by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (10), the assigned independent review organization shall, within 1 business day after the receipt of the information, forward the information to the health insurance issuer.

(17) (a) On receipt of the information required to be forwarded pursuant to subsection (16), the health insurance issuer may reconsider its adverse

determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health insurance issuer of its adverse determination or final adverse determination pursuant to subsection (17)(a) may not delay or terminate the external review.

(18) (a) The external review may be terminated only if the health insurance issuer decides, on completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination.

(b) Immediately upon making the decision to reverse its adverse determination or final adverse determination, as provided in subsection (18)(a), the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative, the assigned independent review organization, and the commissioner in writing of its decision.

(c) The assigned independent review organization shall terminate the external review on receipt of the notice from the health insurance issuer pursuant to subsection (18)(b).

(19) Each clinical peer selected pursuant to subsection (12) shall review all of the information and documents received pursuant to subsection (14) and any other information submitted in writing by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (10).

(20) (a) Except as provided in subsection (20)(c), within 20 days after being selected in accordance with subsection (12) to conduct the external review, each clinical peer shall provide an opinion to the assigned independent review organization pursuant to subsection (21) on whether the recommended or requested health care service or treatment should be covered.

(b) Except for an opinion provided pursuant to subsection (20)(c), each clinical peer's opinion must be in writing and must include the following information:

(i) a description of the covered person's medical condition;

(ii) a description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be more beneficial to the covered person than any available standard health care services or treatments and that the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments;

(iii) a description and analysis of any medical or scientific evidence considered in reaching the opinion;

(iv) a description and analysis of any evidence-based standard; and

(v) information on whether the clinical peer's rationale for the opinion is based on subsection (21)(a) or (21)(b).

(c) (i) For an expedited external review, each clinical peer shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances require but no later than 5 calendar days after the clinical peer was selected in accordance with subsection (12).

(ii) If the opinion provided pursuant to subsection (20)(c)(i) was not in writing, the clinical peer shall provide to the assigned independent review organization written confirmation of the opinion within 48 hours after the date the opinion was delivered and include the information required under subsection (20)(b).

(21) In addition to the documents and information provided under this section, each clinical peer selected pursuant to subsection (12) shall consider the following information in reaching an opinion as required in subsection (20) to the extent that the information is available and the clinical peer considers the information to be appropriate:

(a) the covered person's pertinent medical records;

(b) the attending ~~physician's or health care professional's~~ *health care provider's* recommendation;

(c) consulting reports from appropriate health care professionals and other documents submitted by the health insurance issuer, the covered person, the covered person's authorized representative, or the covered person's treating ~~physician or~~ health care provider;

(d) the terms of coverage under the covered person's health plan with the health insurance issuer. The terms of coverage must be analyzed to ensure that, except for the health insurance issuer's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the clinical peer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health insurance issuer; and

(e) whether:

(i) the recommended or requested health care service or treatment has been approved by the food and drug administration, if applicable, for the condition;

(ii) the recommended or requested health care service or treatment is typically covered by other insurers or payers, such as medicare; or

(iii) medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be more beneficial to the covered person than any available standard health care service or treatment and that the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments.

(22) (a) Except as provided in subsection (22)(b), within 20 days after the date of receiving the opinion of each clinical peer pursuant to subsection (20), the assigned independent review organization shall make a decision and provide written notice of the decision to the covered person or, if applicable, the covered person's authorized representative as well as the health insurance issuer ~~and the commissioner~~.

(b) (i) For an expedited external review, within 48 hours after the date of receiving the opinion of each clinical peer pursuant to subsection (20), the assigned independent review organization, in accordance with subsection (22)(c), shall make a decision and provide notice of the decision orally or in writing to the recipients listed in subsection (22)(a).

(ii) If the notice provided under subsection (22)(b)(i) was not in writing, within 48 hours after the date of providing that notice the assigned independent review organization shall provide written confirmation of the decision to the recipients listed in subsection (22)(a) and include the information set forth in subsection (22)(d).

(c) (i) If a majority of the clinical peers respond that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health insurance issuer's adverse determination or final adverse determination.

(ii) If a majority of the clinical peers respond that the recommended or requested health care service or treatment should not be covered, the

independent review organization shall make a decision to uphold the health insurance issuer's adverse determination or final adverse determination.

(iii) If the clinical peers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical peer to help the independent review organization make a decision based on the opinions of a majority of the clinical peers pursuant to subsections (22)(c)(i) or (22)(c)(ii).

(iv) The additional clinical peer selected under (22)(c)(iii) shall use the same information to reach an opinion as used by the clinical peers who have already submitted their opinions pursuant to subsection (20).

(v) The selection of the additional clinical peer under subsection (22)(c)(iii) may not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical peers.

(d) The independent review organization shall include in the notice provided pursuant to subsection (22)(b):

(i) a general description of the reason for the request for external review;

(ii) the written opinion of each clinical peer, including the opinion of each clinical peer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;

(iii) the date on which the independent review organization was assigned by the commissioner to conduct the external review;

(iv) the time period during which the external review was conducted;

(v) the date of the independent review organization's decision; and

(vi) the principal rationale for its decision.

(e) On receipt of a notice of a decision pursuant to subsection (22)(c)(i) reversing the adverse determination or final adverse determination, the health insurance issuer shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the adverse determination or final adverse determination."

Section 43. Section 33-32-417, MCA, is amended to read:

"33-32-417. Minimum qualifications for independent review organizations. (1) To be approved to conduct external reviews as provided in 33-32-416, an independent review organization shall establish and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in 33-32-410 through 33-32-412. The written policies and procedures must include, at a minimum:

(a) a quality assurance mechanism that ensures:

(i) that external reviews are conducted within the specified timeframes and that required notices are provided in a timely manner;

(ii) that the independent review organization is unbiased;

(iii) both the selection of qualified and impartial clinical peers to conduct external reviews on behalf of the independent review organization and the suitable matching of reviewers to specific cases;

(iv) that the independent review organization employs or contracts with an adequate number of clinical peers to meet the objective of qualified, impartial reviews;

(v) the confidentiality of medical and treatment records as well as clinical review criteria; and

(vi) that any person employed by or under contract with the independent review organization adheres to the requirements of this part;

(b) a toll-free telephone service to receive information related to external reviews on a 24-hour-a-day, 7-day-a-week basis. The telephone service must be capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other-than-normal business hours.

(c) an agreement to maintain and provide to the commissioner the information required under 33-32-421.

(2) All clinical peers assigned by an independent review organization to conduct external reviews must:

(a) be ~~physicians or other~~ appropriate health care providers; and

(b) meet the following minimum qualifications:

(i) be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(ii) be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical conditions of the covered person;

(iii) hold a nonrestricted professional license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in one or more areas appropriate to the subject of the external review; and

(iv) have no history of disciplinary actions or sanctions, including participation restrictions or a loss of staff privileges either taken or pending by any hospital, government agency, governmental unit, or regulatory body if the disciplinary actions or sanctions raise a substantial question as to the clinical peer's physical, mental, or professional competence or moral character.

(3) In addition to the requirements in subsection (1), an independent review organization may not own or control, be a subsidiary of, or in any way be owned or controlled by or exercise control over a health plan, a health insurance issuer, a national, state, or local trade association of health plans, or a national, state, or local trade association of health care providers.

(4) (a) In addition to the requirements in subsections (1) through (3), to be approved under 33-32-416 to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical peer assigned by the independent review organization to conduct the external review may have a material professional, familial, or financial conflict of interest with any of the following:

(i) the health insurance issuer that is the subject of the external review;

(ii) the covered person whose treatment is the subject of the external review or, if applicable, the covered person's authorized representative;

(iii) any officer, director, or management employee of the health insurance issuer that is the subject of the external review;

(iv) the health care provider, the health care provider's medical group, or the independent practice association recommending the health care service or treatment that is the subject of the external review;

(v) the facility at which the recommended health care service or treatment would be provided; or

(vi) the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(b) In determining whether an independent review organization or a clinical peer assigned by the independent review organization to conduct the external review has a material professional, familial, or financial conflict of interest, the commissioner shall take into consideration:

(i) situations in which the independent review organization to be assigned to conduct an external review of a specified case or a clinical peer to

be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subsection (4)(a) if the characteristics of that relationship or connection do not pose a material professional, familial, or financial conflict of interest that otherwise would result in the disapproval of the independent review organization or of the clinical peer from conducting the external review; and

(i) whether other medical expertise is available within a reasonable timeframe.

(5) (a) An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards determined by the commissioner to be equivalent to or exceed the minimum qualifications of this section is presumed to be in compliance with this section and eligible for approval under 33-32-416. However, the commissioner shall also consider the conflict of interest provisions of subsection (4).

(b) The commissioner shall initially and periodically review the independent review organization accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's standards are and continue to be equivalent to or exceed the minimum qualifications established under this section. The commissioner may accept a review conducted by the NAIC for the determination under this subsection (5)(b).

(c) On request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the commissioner or the NAIC to enable the commissioner to determine if the entity's standards are equivalent to or exceed the minimum qualifications established under this section. The commissioner may exclude any private accrediting entity that is not reviewed by the NAIC."

Section 44. Section 33-32-423, MCA, is amended to read:

"33-32-423. Disclosure requirements. (1) Each health insurance issuer shall include a description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage provided to covered persons.

(2) The disclosure required under subsection (1) must:

(a) be in a format prescribed by the commissioner; and

(b) include a statement that informs the covered person of the right of the covered person or, if applicable, the covered person's authorized representative to file a request for an external review of an adverse determination or final adverse determination with the ~~commissioner~~ *health insurance issuer*. The statement may explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or level of effectiveness. The statement must include the telephone number and address of the commissioner.

(3) In addition to the requirements under subsection (2), the statement must inform the covered person that, when filing a request for an external review, the covered person or, if applicable, the covered person's authorized representative is required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review."

Section 45. Section 35-1-217, MCA, is amended to read:

"35-1-217. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals.

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under rules adopted pursuant to 35-1-1315.

(8) ~~The~~ *Except as provided in 33-3-601, the* document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 46. Section 35-1-931, MCA, is amended to read:

"35-1-931. Dissolution by incorporators or initial directors. (1) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state, for filing, articles of dissolution that set forth:

(1)(a) the name of the corporation;

(2)(b) the date of its incorporation;

(3)(c) either that none of the corporation's shares have been issued or that the corporation has not commenced business;

(4)(d) that any debt of the corporation does not remain unpaid;

(5)(e) if shares were issued, that the net assets of the corporation remaining after winding up of the corporation's business and affairs have been distributed to the shareholders; and

(6)(f) that a majority of the incorporators or initial directors authorized the dissolution.

(2) *In addition to the requirements under this part, a domestic stock insurer shall comply with the provisions of Title 33, chapter 3, part 6."*

Section 47. Section 35-1-932, MCA, is amended to read:

"35-1-932. Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) the board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) the shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5).

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), requires a greater vote or a vote by voting groups to be adopted, the proposal to dissolve must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (6), of all the votes entitled to be cast on that proposal.

(6) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

(7) *In addition to the requirements under this part, a domestic stock insurer shall comply with the provisions of Title 33, chapter 3, part 6.*

Section 48. Section 35-2-119, MCA, is amended to read:

“35-2-119. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. The document may contain other information as well.

(3) The document must be typewritten or printed unless an electronic form is allowed by the secretary of state.

(4) The document must be in the English language. However, a corporate name does not need to be in English if it is written in English letters or Arabic or Roman numerals.

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the corporation's board of directors, its president, or another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) (i) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(ii) For the purposes of this subsection (5)(b), “authorized agent” means any individual granted permission by an entity to execute a document on behalf of

the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) *The Except as provided in 33-3-601, the document must be delivered to the office of the secretary of state for filing and must be accompanied by:*

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.”

Section 49. Section 35-2-720, MCA, is amended to read:

“35-2-720. Dissolution by incorporators or directors and third persons. (1) A majority of the incorporators or directors of a corporation that does not have members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of state articles of dissolution.

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation.

(3) In approving dissolution, the incorporators or directors shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

(4) *In addition to the requirements under this part, a domestic mutual insurer shall comply with the provisions of Title 33, chapter 3, part 6.”*

Section 50. Section 35-2-721, MCA, is amended to read:

“35-2-721. Dissolution by directors, members, and third persons. (1) Unless this chapter, the articles, bylaws, or the board of directors or members, acting pursuant to subsection (1)(c), require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing, by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which approval is to be obtained in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider

dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution must indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

(7) *In addition to the requirements under this part, a domestic mutual insurer shall comply with the provisions of Title 33, chapter 3, part 6.*

Section 51. Section 45-6-301, MCA, is amended to read:

“45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; or

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102; or

~~(c) purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not entitled.~~

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding \$1,500 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,500 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,500 in value or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(ii) A person convicted of the theft of any commonly domesticated hooved animal shall be fined an amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 52. Section 53-4-1004, MCA, is amended to read:

"53-4-1004. (Temporary) Eligibility for program -- rulemaking. (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) must have a combined family income at or below 250% of the federal poverty level or at a lower level determined by the department of public health and human services as provided in subsection (4);

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c), for 3 months prior to enrollment in the program or since birth, whichever period is less~~]; except that the break in coverage is waived for a covered dependent whose coverage moves from the purchasing pool provided under Title 33, chapter 22, part 20, to coverage under this part];~~

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate or may limit the amount, scope, or duration of specific services provided. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999; sec. 14, I.M. No. 155, approved November 4, 2008; ~~bracketed language void on occurrence of contingency--sec. 7, Ch. 87, L. 2009.~~)”

Section 53. Section 53-6-1201, MCA, is amended to read:

“53-6-1201. Special revenue fund – health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(d);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

~~(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;~~

~~(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and~~

~~(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.~~

(4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(b) Until the programs or credits described in subsections (3)(b) and (3)(d) ~~through (3)(g)~~ are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 54. Repealer. The following sections of the Montana Code Annotated are repealed:

- 15-30-2368. Tax credit for health insurance premiums paid -- eligible small employers -- pass-through entities.
- 15-31-130. Tax credit for health insurance premiums paid -- eligible small employers -- corporations.
- 33-22-2001. Establishment of small business health insurance pool -- intent.
- 33-22-2002. Small business health insurance pool -- definitions.
- 33-22-2003. Board of directors -- composition -- appointment -- compensation.
- 33-22-2004. Powers and duties of board.
- 33-22-2005. Duties of commissioner -- rulemaking authority.
- 33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid -- eligibility for small group coverage -- amounts.
- 33-22-2007. Filing for tax credit -- filing for premium incentive payments and premium assistance payments.
- 33-22-2008. Registration -- funding limitations -- transfers -- maximum number -- waiting list -- information transfer for tax credits.
- 33-22-2009. Penalties.
- 53-2-216. Health insurance premium assistance -- legislative intent -- application for section 1115 waiver -- duties of board of directors of small business health insurance pool, commissioner of insurance, and department of public health and human services.
- 53-2-217. Contingency on expenditure.

Section 55. Section 16, Chapter 58, Laws of 2011, is amended to read:

“**Section 16. Termination.** [This act] terminates June 30, ~~2017~~ 2021.”

Section 56. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 28, part 1, and the provisions of Title 33, chapter 28, part 1, apply to [section 1].

Section 57. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 58. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2017.

(2) [Sections 6, 7, 26, 55, and this section] are effective on passage and approval.

Approved April 4, 2017

CHAPTER NO. 152

[HB 175]

AN ACT REVISING MEDICAL CARE SAVINGS ACCOUNT LAWS; REVISING THE CONTRIBUTION LIMITS FOR MEDICAL CARE SAVINGS ACCOUNTS; ALLOWING THE USE OF MEDICAL CARE SAVINGS ACCOUNT FUNDS FOR REIMBURSEMENT OF TIME USED FOR FAMILY LEAVE; ALLOWING

A PARENT OR CHILD TO INHERIT A MEDICAL CARE SAVINGS ACCOUNT TAX-FREE; ALLOWING MEDICAL CARE SAVINGS ACCOUNT FUNDS TO BE USED FOR ELIGIBLE MEDICAL EXPENSES OF ANYONE; ALLOWING MEDICAL CARE SAVINGS ACCOUNT FUNDS TO BE USED FOR ELIGIBLE MEDICAL EXPENSES OF A DECEASED ACCOUNT HOLDER WITHIN 1 YEAR OF DEATH; REQUIRING ANNUAL REPORTING OF THE STARTING BALANCE AND ENDING BALANCE OF THE ACCOUNT; AMENDING SECTIONS 15-30-2110, 15-61-102, 15-61-202, 15-61-203, AND 15-61-204, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2110, MCA, is amended to read:

“15-30-2110. Adjusted gross income. (1) Subject to subsection (14), adjusted gross income is the taxpayer’s federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability as determined under subsection (15);

(c) that portion of a shareholder’s income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer’s Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, ~~of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer~~ *including a medical care savings account inherited by an immediate family member as provided in 15-61-202(7)*;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero;

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163; and

(t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219,

and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state as provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under

this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37; (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(16) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates December 31, 2023--sec. 33, Ch. 457, L. 2015.)"

Section 2. Section 15-61-102, MCA, is amended to read:

"15-61-102. Definitions. As used in this chapter, unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

(c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50;

(d) an employer if the employer has a self-insured health plan under ERISA;

(e) the account holder or an employee for whose benefit the account in question is established;

(f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;

(g) an attorney licensed to practice law in this state;

(h) a person who is an enrolled agent allowed to practice before the United States internal revenue service.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "*Consumer price index*" means the consumer price index, United States city average, for all items, for all urban consumers, as published by the bureau of labor statistics of the United States department of labor.

(4) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(5) "Eligible medical expense" means:

(a) an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder;

(b) an expense for long-term care, including long-term care insurance or a long-term care annuity; and

(c) a family leave expense.

(6) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(7) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

(8) "*Family leave expense*" means:

(a) an expense, calculated monthly, approximating wages lost while caring for an immediate family member for the purposes allowed under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et seq., and 29 CFR, part 825. A family leave expense is calculated by multiplying the hourly wage that the caregiver would have been paid by the number of hours that would typically be spent working but were instead spent caring for an immediate family member. The hourly wage for a person paid a salary is the gross annual wage divided by 2,087.

(b) a premium paid for family leave insurance.

(9) "*Immediate family member*" means a parent, spouse, or child.

(7)(10) “Medical care savings account” or “account” means an account established with an account administrator in this state pursuant to 15-61-201.”

Section 3. Section 15-61-202, MCA, is amended to read:

“15-61-202. Tax exemption – conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-2110(2)(j), as long as the principal and interest or other income is contained within the account, *distributed to an immediate family member as provided in subsection (7)*, or withdrawn only for payment of eligible medical expenses ~~or for the long-term care of the employee or account holder or a dependent of the employee or account holder or for paying the expenses of administering the account.~~ Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense ~~or the long-term care of the employee or account holder or a dependent of the employee or account holder or for paying the expenses of administering the account.~~

(2) (a) An employee or account holder may ~~exclude as an annual contribution in 1 year annually contribute~~ not more than \$3,000:

(i) \$3,500 in tax year 2018;

(ii) \$4,000 in tax year 2019;

(iii) *an amount determined for each subsequent tax year by multiplying the amount in subsection (2)(a)(ii) by an inflation factor determined by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2018 and rounding the resulting figure to the nearest \$500 increment.*

(b) There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-2131 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-2131 or exclude pursuant to 15-30-2110 an amount representing a loss in the value of an investment contained in an account.

~~(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed \$3,000. An employee or account holder who deposits more than \$3,000 into an account in a year may exclude from the employee’s or account holder’s adjusted gross income in accordance with 15-30-2110(2)(j) in a subsequent year any part of \$3,000 per year not previously excluded.~~

~~(5)(4) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the who is an immediate family member of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.~~

~~(6)(5) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.~~

(7)(6) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8)(7) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223. *An immediate family member who receives the distribution provided for in this subsection becomes the account holder and may:*

(a) *within 1 year of the death of the employee or account holder from which the account was inherited, withdraw funds for eligible medical expenses incurred by the deceased; and*

(b) *contribute to the account, retain money in the account tax-free, and withdraw funds from the account as provided in this chapter."*

Section 4. Section 15-61-203, MCA, is amended to read:

"15-61-203. Withdrawal of funds from account for purposes other than eligible medical expenses and long-term care. (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder or for paying the expenses of administering the account only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

(2) ~~If the employee or account holder withdraws money from the account there is a penalty equal to 10% of the amount of a withdrawal for a withdrawal other than for eligible medical expenses or long-term care for expenses of administering the account or other than on the last business day of the account administrator's business year; the. The administrator shall may withhold the penalty from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a the penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal.~~ Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder or an employee, means the last weekday in December."

Section 5. Section 15-61-204, MCA, is amended to read:

"15-61-204. Administration of account. (1) (a) An account administrator shall administer the medical care savings account from which the payment of claims is made and, except as provided in subsection (1)(b), has a fiduciary duty to the person for whose benefit the account is administered.

(b) Except for reporting and remitting of penalties to the department of revenue, a financial institution shall administer a medical care savings account as a regular deposit or share account and has the same rights and duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other provision of this chapter, a financial institution is not responsible for determining whether a medical expense is eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying ~~the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the employee or account holder or a dependent of the employee or account holder,~~ or for paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses or for a long-term care insurance policy or annuity ~~of the employee or account holder or a dependent of the employee or account holder~~ that is otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder ~~or a dependent of the employee or account holder~~ in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses. The burden of proving that a withdrawal from a medical *care* savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator or the employer of the account holder.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or account holder to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) The employee or account holder must annually report to the department the starting balance and ending balance of a medical care savings account.

~~(6)~~(7) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

~~(7)~~(8) In the case of an account administrator who is also the account holder or an employee:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution or other holder of the account;

(c) documentation of eligible medical expenses must be maintained but is not required to be submitted to the account administrator;

(d) contributions to a medical *care* savings account must be established in a separate account and be segregated from other funds;

(e) the account holder is subject to the same yearend reporting requirements as all other account administrators; and

(f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical expenses to the state.”

Section 6. Applicability. [This act] applies to income tax years beginning after December 31, 2017.

Approved April 4, 2017

CHAPTER NO. 153

[HB 285]

AN ACT ESTABLISHING A PALLIATIVE CARE ACCESS INITIATIVE; CREATING THE STATE PALLIATIVE CARE AND QUALITY OF LIFE INTERDISCIPLINARY ADVISORY COUNCIL; REQUIRING A PALLIATIVE CARE CONSUMER AND PROFESSIONAL INFORMATION AND EDUCATION PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings – purpose. (1) The legislature finds that:

(a) individuals who are experiencing complex, chronic health issues that affect their quality of life should be offered palliative care as a treatment option;

(b) palliative care is appropriate at any age and any stage of a disease and can be provided in conjunction with curative treatments; and

(c) palliative care includes but is not limited to discussions of an individual’s treatment goals and options, including, when appropriate, discussion of comprehensive pain and symptom management and of hospice care.

(2) It is the purpose of [sections 1 through 5] to ensure that individuals who could benefit from palliative care are made aware of their options through a consumer education program and an informed workforce trained in the benefits of palliative care.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) “Council” means the palliative care and quality of life interdisciplinary advisory council provided for in [section 3].

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Palliative care” means patient-centered and family-centered medical care that optimizes quality of life by anticipating, preventing, and treating suffering caused by serious illness.

(4) “Program” means the palliative care consumer and professional information and education program provided for in [section 5].

Section 3. Palliative care and quality of life interdisciplinary advisory council – duties – membership. (1) There is a state palliative care and quality of life interdisciplinary advisory council within the department to advise the department on matters related to the establishment, maintenance, operation, and evaluation of outcomes of palliative care initiatives in this state.

(2) (a) The council consists of at least nine members appointed by the director of the department. Members must include:

(i) individuals with collective expertise in interdisciplinary palliative care provided in a variety of settings and to children, youth, adults, and the elderly;

(ii) individuals with expertise in nursing, social work, and pharmacy; and

(iii) members of the clergy or individuals with professional spiritual experience.

(b) The appointees must include:

(i) at least two board-certified physicians or nurses with expertise in palliative care;

(ii) at least one board-certified physician with expertise in chronic pain management;

(iii) a department employee with knowledge of the state medicaid program; and

(iv) a representative of a private insurer.

(3) Council members shall serve staggered 3-year terms.

(4) Council members shall elect a presiding officer and vice presiding officer and shall establish the duties of the officers.

(5) The council shall meet at least twice a year according to a schedule established by the director or the director's designee.

(6) The department shall provide administrative support to the council.

(7) Council members may not receive compensation for their service or be reimbursed for expenses.

Section 4. Duties of council. The council shall advise the director of the department on ways to improve access to and quality of palliative care. At a minimum, the council shall:

(1) conduct an initial survey of palliative care services available in Montana;

(2) submit an initial report highlighting opportunities and challenges for palliative care, including recommendations on how to address both the opportunities and the challenges;

(3) advise the department on material for inclusion in the palliative care section of the website provided for in [section 5]; and

(4) recommend priorities for pediatric palliative care and the availability and delivery of palliative care services in rural and underserved areas.

Section 5. Palliative care consumer and professional information and education program. (1) There is a statewide palliative care consumer and professional information and education program in the department, consisting of materials provided on the department's website.

(2) The program is intended to maximize the effectiveness of palliative care initiatives in Montana by ensuring that comprehensive and accurate information and education about palliative care is available to the public, health care providers, and health care facilities.

(3) (a) The palliative care information available on the department's website shall include but is not limited to information about:

(i) continuing educational opportunities for health care providers;

(ii) palliative care delivery in all settings, including but not limited to the home, hospitals, assisted living facilities, and nursing homes;

(iii) best practices for palliative care delivery; and

(iv) consumer education and referral information for palliative care, including hospice care.

(b) The information must include links to external resources.

(4) The department may develop and implement other palliative care initiatives that the department determines would further the purposes of [sections 1 through 5].

(5) The department shall consult with the council in implementing this section.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 5].

Section 7. Direction to department – appointment of advisory council. The director of the department of public health and human services shall appoint the advisory council provided for in [section 3] no later than 90 days after [the effective date of this act].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 4, 2017

CHAPTER NO. 154

[HB 323]

AN ACT ALLOWING A SCHOOL TO MAINTAIN A STOCK SUPPLY OF AN OPIOID ANTAGONIST TO BE USED IN THE EVENT OF AN ACTUAL OR PERCEIVED OPIOID OVERDOSE EMERGENCY; LIMITING GOVERNMENTAL LIABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Emergency use of opioid antagonist in school setting – limit on liability. (1) A school, whether public or nonpublic, may maintain a stock supply of an opioid antagonist to be administered by a school nurse or other authorized personnel to any student or nonstudent as needed for an actual or perceived opioid overdose. A school that intends to obtain an order for emergency use of an opioid antagonist in a school setting or at related activities shall adhere to the following requirements:

(a) A school that stocks an opioid antagonist shall develop a protocol related to the training of school employees, the maintenance and location of the opioid antagonist, and immediate and long-term followup to the administration of the medication, including making a 9-1-1 emergency call.

(b) The opioid antagonist must be prescribed by a physician, advanced practice registered nurse, or physician assistant. The school must be designated as the patient, and each prescription for an opioid antagonist must be filled by a licensed pharmacy.

(c) The school shall provide training to authorized personnel. The training must include causes of opioid overdose, recognition of signs and symptoms of opioid overdose, indications for the administration of an opioid antagonist, administration technique, and the need for immediate access to a certified emergency responder. Training must be provided by a school nurse, certified emergency responder, or other health care professional.

(d) The opioid antagonist must be kept in a secure and easily accessible location.

(e) A school nurse or other authorized personnel may, in good faith, administer the opioid antagonist to any student or nonstudent who is experiencing a potential life-threatening opioid overdose based on the protocol developed by the school.

(f) If a school stocks an opioid antagonist that has been prescribed to the school, that school shall inform parents or guardians about the potential use of the opioid antagonist in an opioid overdose emergency. The school shall make the protocol available upon request.

(g) A school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the administration of an opioid antagonist to a student or nonstudent unless an act or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) For the purposes of this section, “opioid antagonist” means a drug that binds to opioid receptors and blocks or inhibits the effect of opioids acting on

those receptors, including but not limited to naloxone hydrochloride or any other similarly acting drug approved by the United States food and drug administration.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 5, part 4, and the provisions of Title 20, chapter 5, part 4, apply to [section 1].

Section 3. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Effective date. [This act] is effective July 1, 2017.

Approved April 4, 2017

CHAPTER NO. 155

[HB 350]

AN ACT GENERALLY REVISING LAWS CONCERNING RESIDENTIAL AND MOBILE HOME LOT RENTAL AGREEMENTS; REVISING DEFAULT EXTENSION PERIOD TERMS, VALUE OF RENTALS, AND DEFAULT METHODS OF RENT PAYMENT; AMENDING SECTIONS 70-24-201, 70-24-205, AND 70-33-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-201, MCA, is amended to read:

“70-24-201. Rental agreement – terms and conditions. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord’s address *or using electronic funds transfer to an account designated for the payment of rent by the landlord*;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) **of this section.**”

Section 2. Section 70-24-205, MCA, is amended to read:

“70-24-205. Extension of written rental agreements. (1) ~~Prior to signing a written rental agreement, the landlord and tenant shall agree to accept a default extension period for the lease chosen by the tenant pursuant to subsection (2) that is to be given effect if a revised lease is not agreed to or if neither party gives a 30-day written notice of termination to the other prior to the rental agreement’s original termination date.~~

(2) ~~The tenant shall choose from a list of default options, including but not limited to renewal for an additional term of equal length as the original term, renewal for a set term that is not of equal length as the original term, renewal on a month-to-month basis, or termination of the tenancy.~~

~~(3) If neither party gives a 30-day written notice to the other as to the extension or termination of the tenancy, the mutually agreed upon default option takes effect immediately following the termination of the original rental agreement.~~

~~(4) If the landlord and tenant fail to establish a default option at the beginning of the tenancy as required in subsection (1) a default extension period for the lease in the rental agreement and neither party gives a 30-day written notice to the other to terminate the tenancy before the rental agreement's original termination date, the tenancy continues on a month-to-month basis."~~

Section 3. Section 70-33-201, MCA, is amended to read:

"70-33-201. Rental agreements. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the lot as determined by the landlord;

(b) rent is payable at the landlord's address or using electronic funds transfer to an account designated for the payment of rent by the landlord;

(c) periodic rent is payable at the beginning of a term that is a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is from month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or as provided by subsection (2)."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to rental agreements entered into, extended, or renewed on or after [the effective date of this act].

Approved April 4, 2017

CHAPTER NO. 156

[HB 362]

AN ACT REQUIRING PHYSICIANS APPLYING FOR LICENSURE UNDER THE INTERSTATE MEDICAL LICENSURE COMPACT TO SUBMIT FINGERPRINTS FOR A BACKGROUND CHECK; PROHIBITING DISSEMINATION OF CRIMINAL HISTORY INFORMATION ACROSS STATE LINES; AMENDING SECTION 37-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-305, MCA, is amended to read:

"37-3-305. Qualifications for licensure. (1) Except as provided in subsection (2), the board shall grant a physician's license to practice medicine in this state to an applicant who:

(a) is of good moral character as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved residency program or, for an applicant who graduated from medical school prior to 2000, has had experience or training that the board has determined is at least the equivalent of an approved residency program;

(d) has passed all of the steps of the United States medical licensing examination, the federation of state medical boards' federation licensing examination, or an examination offered by any of the following entities:

- (i) the national board of medical examiners or its successors;
- (ii) the national board of osteopathic medical examiners or its successors;
- (iii) the medical council of Canada or its successors if the applicant is a graduate of a Canadian medical school approved by the medical council of Canada or its successors; or
- (iv) the educational commission for foreign medical graduates or its successors if the applicant is a graduate of a foreign medical school outside of the United States and Canada;
- (e) has submitted a completed application with the required nonrefundable fee; and
- (f) is able to communicate in the English language as determined by the board.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) *A physician applying for expedited licensure in another state as allowed under 37-3-356 shall submit fingerprints to the board to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.*

~~(3)~~(4) The board may by rule impose additional requirements for licensure to protect the health and safety of the public or to enter into a mutual recognition licensing agreement with another state.

~~(4)~~(5) The board may adopt rules that provide conditions for short-term nondisciplinary licenses.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 4, 2017

CHAPTER NO. 157

[HB 396]

AN ACT REVISING LAWS RELATED TO TAX INCREMENT FINANCING; REQUIRING CONSULTATION WITH AFFECTED LOCAL TAXING JURISDICTIONS WHEN ADOPTING TAX INCREMENT FINANCING PROVISIONS AS PART OF AN URBAN RENEWAL PLAN OR A TARGETED ECONOMIC DEVELOPMENT DISTRICT COMPREHENSIVE PLAN AND WHEN MODIFYING AN URBAN RENEWAL PLAN RELATED TO THE USE OF GENERAL OBLIGATION BONDS; AMENDING SECTIONS 7-15-4221 AND 7-15-4282, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4221, MCA, is amended to read:

“7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, the modification is subject to any rights at law or in equity that a lessee or purchaser or the lessee’s or purchaser’s successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) ~~Any~~ (a) *Before modifying an urban renewal plan proposed for modification to provide tax increment financing for the district or to use bonds as provided in 7-15-4218, the municipality shall provide notice to the county and the school district in which the urban renewal district is located and provide the county and the school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the effect on the county or school district.*

(b) *The tax increment financing provision must be proposed with consideration for the county and school districts that include municipal territory.*

(4) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are validated.

(5) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan.”

Section 2. Section 7-15-4282, MCA, is amended to read:

“7-15-4282. Authorization for tax increment financing. (1) An urban renewal plan as defined in 7-15-4206 or a targeted economic development district comprehensive development plan created as provided in 7-15-4279 may contain a provision or be amended to contain a provision for the segregation and application of tax increments as provided in 7-15-4282 through 7-15-4294.

(2) (a) *Before adopting a tax increment financing provision as part of an urban renewal plan or a comprehensive development plan, a municipality shall provide notice to the county and the school district or targeted economic development district in which the urban renewal district is located and provide the county and school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the county or school district.*

(b) *Before adopting a tax increment financing provision as part of a comprehensive development plan, a county shall provide notice to the school district in which the targeted economic development district is located and provide the school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the school district.*

(2)(3) *The tax increment financing provision must take into account the effect on the county and school districts that include local government territory.”*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 4, 2017

CHAPTER NO. 158

[HB 470]

AN ACT EXPANDING THE EXEMPTION FROM LICENSURE AS A PSYCHOLOGIST TO INCLUDE PSYCHOLOGICAL TESTING, EVALUATION, AND ASSESSMENT PERFORMED BY MARRIAGE AND FAMILY THERAPISTS; CLARIFYING THAT THE QUALIFIED MEMBERS OF OTHER PROFESSIONS INCLUDE LICENCED MARRIAGE AND FAMILY THERAPISTS; EXPANDING RULEMAKING; AND AMENDING SECTIONS 37-17-104 AND 37-37-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-17-104, MCA, is amended to read:

“37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, *marriage and family therapists licensed under Title 37, chapter 37*, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words “psychology”, “psychologist”, “psychological”, or “psychologic”;

(b) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of the office or position within the confines of the agency or institution;

(c) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

(d) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of that person’s residence to perform these activities and services. However, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if the services are to exceed 10 days in a calendar year.

(e) a person authorized by the laws of the state or country of the person’s former residence to perform activities and services, who has recently become a resident of this state and who has submitted a completed application for a license in this state, from performing the activities and services pending disposition of the person’s application; and

(f) the offering of lecture services.

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

(3) The board of behavioral health shall adopt rules that qualify a licensee under Title 37, chapter 22, *or 23, or 37*, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers, *and professional counselors, and licensed marriage and family therapists* must be consistent with the guidelines of their respective national associations. A qualified licensee providing services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the rules.”

Section 2. Section 37-37-102, MCA, is amended to read:

“37-37-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Board” means the board of behavioral health established in 2-15-1744.

(2) “Department” means the department of labor and industry.

(3) “Licensee” means a person licensed under this chapter.

(4) “Marriage and family therapist licensure candidate” means a person who is registered pursuant to 37-37-205 to engage in marriage and family therapy and earn supervised work experience necessary for licensure.

(5) (a) “Marriage and family therapy” means the diagnosis and treatment of mental and emotional disorders within the context of interpersonal relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family system theories and techniques, counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples, and families.

(b) *The term includes the performance of psychological testing, evaluation, and assessment if the licensee is qualified to administer testing and make evaluations and assessments pursuant to 37-17-104.*

(6) “Practice of marriage and family therapy” means the provision of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, for a fee, monetary or otherwise, either directly or through public or private organizations.

(7) “Qualified supervisor” means a supervisor determined by the board to meet standards established by the board for supervision of clinical services.

(8) “Recognized educational institution” means:

(a) an educational institution that grants a bachelor’s, master’s, or doctoral degree and that is recognized by the board and by a regional accrediting body; or

(b) a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education.”

Approved April 4, 2017

CHAPTER NO. 159

[SB 157]

AN ACT EXTENDING DEPARTMENT OF LIVESTOCK REGULATIONS TO INCLUDE MILK PRODUCED BY A HOOFED MAMMAL; MODIFYING DEFINITIONS; AND AMENDING SECTION 81-22-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-22-101, MCA, is amended to read:

“81-22-101. Definitions. For the purpose of this chapter, the following definitions are adopted:

(1) “Agent” means a person who is authorized by another person to act for that other person in dealing with a third person.

(2) “Butter” is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) “Cheese” is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) “C.I.P.” means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(5) “Code of Federal Regulations” refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health and human services.

(6) “Cream” means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(7) “Creamery” means a place where butter is made for commercial purposes.

(8) “Culture” means the harmless lactic acid fermenting bacteria that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and similar products.

(9) “Dairy” or “dairy farm” means a place where one or more ~~cows or goats~~ *hoofed mammals* are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(10) The term “department”, unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(11) “Directly acidified” and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(12) “Filled dairy products” means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(13) “French ice cream”, “French custard ice cream”, and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(14) “Grading” means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(15) “Ice cream” is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(16) (a) “Ice cream mix” is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) “Mix” includes the liquid, unfrozen product from which those frozen products listed under subsections (21)(a)(iii) through (21)(a)(xii) are made.

(17) “Intrastate commerce” means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(18) “Manufactured dairy product” means an item enumerated in subsection (21) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, manufactured dairy product includes but is not limited to:

- (a) ice cream or its mix;
- (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;
- (c) sherbets of all kinds or their mixes;
- (d) animal or vegetable fat frozen desserts or their mixes;
- (e) frozen confections or their mixes when made in a manufactured dairy products plant;
- (f) water ices or their mixes;
- (g) frozen dessert sandwiches, bars, cones, and similar novelties;
- (h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;
- (i) ice milk or its mix;
- (j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;
- (k) sour cream when cultured or directly acidified;
- (l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;
- (m) buttermilk, cultured or from churned butter or directly acidified;
- (n) butter;
- (o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

(19) “Manufactured dairy products plant” or “factory” means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

(20) “Milk” means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy *cows hooved mammals* located in modified accredited areas and modified certified areas or from *cows hooved mammals* in herds fully accredited as tuberculosis-free by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(21) (a) “Milk” and “cream” mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

- (i) butter;
- (ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;
- (iii) ice cream or its mix;
- (iv) frozen dessert or its mix;
- (v) sherbets of all kinds or their mixes;
- (vi) frozen ice cream bars, sandwiches, cones, and similar novelties;
- (vii) frozen desserts or products made in the semblance or imitation of frozen dessert;
- (viii) frozen confections or their mixes;

- (ix) water ices or their mixes;
- (x) ice milk or its mix;
- (xi) French ice cream, French custard, or their mixes;
- (xii) frozen custard or its mix and frozen yogurt;
- (xiii) yogurt, flavored yogurt, and low-fat yogurt;
- (xiv) sour cream, either cultured or directly acidified;
- (xv) cream cheese, either cultured or directly acidified;
- (xvi) buttermilk, either cultured, from churned butter, or directly acidified;
- (xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;
- (xviii) dry or powdered milk; and
- (xix) condensed milk products.

(b) The items specified in subsection (21)(a) must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.

(22) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(23) "Mislabelled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(24) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process that has been recognized by the United States public health service to be equally effective and that is approved by the department.

(26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(27) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(29) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(30) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients."

Approved April 6, 2017

CHAPTER NO. 160

[HB 30]

AN ACT AMENDING TAX INCREMENT PROVISIONS RELATED TO CERTAIN LOCAL MILL LEVIES; EXEMPTING LEVIES VOTED ON AFTER THE ADOPTION OF TAX INCREMENT FINANCING; AMENDING SECTION 7-15-4286, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4286, MCA, is amended to read:

"7-15-4286. Procedure to determine and disburse tax increment.

(1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or targeted economic development district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) ~~The~~ *Except as provided in subsection (2)(b), the tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district; except for the university system mills levied and assessed against property, must be paid into a special fund held by the treasurer of the local government and used as provided in 7-15-4282 through 7-15-4294.*

(b) *The combined mill rates used to calculate the tax increment may not include mill rates for:*

(i) *the university system mills levied pursuant to 15-10-108 and 20-25-439; and*

(ii) *a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision.*

(b)(c) ~~The~~ *The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law."*

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to tax increment provisions adopted by urban renewal districts and targeted economic development districts established under Title 7, chapter 15, part 42, on or after [the effective date of this act] and voted levies approved after [the effective date of this act].

Approved April 6, 2017

CHAPTER NO. 161

[HB 297]

AN ACT PROVIDING AN INCUMBENT ELECTRIC UTILITY WITH A FIRST RIGHT TO CONSTRUCT, OWN, AND MAINTAIN CERTAIN ELECTRIC TRANSMISSION LINES APPROVED BY FEDERALLY REGISTERED

PLANNING AUTHORITIES AND LOCATED IN CERTAIN AREAS; PROVIDING FILING REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) (a) “Electric transmission line” means a line used to convey electrical energy connected to transmission facilities that is energized at 115 kilovolts or more phase to phase.

(b) The term does not include an electric transmission line used solely to connect an energy generation facility to transmission facilities owned by an incumbent electric utility.

(2) “Federally registered planning authority” means a regional transmission organization responsible for moving electricity, planning for the movement of electricity, or both over large interstate areas registered with the federal energy regulatory commission.

(3) “Incumbent electric utility” means a public utility regulated by the public service commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18, or their successors or assignees, that owned, controlled, or operated transmission facilities on or before January 1, 2017.

(4) “Transmission facilities” means facilities that are used to provide transmission services and are owned, controlled, or operated by an incumbent electric utility.

Section 2. Right of first refusal. (1) (a) Except as provided in subsection (1)(b), an incumbent electric utility has the right to construct, own, and maintain an electric transmission line on or after January 1, 2017:

(i) located in an area included in the midwest reliability organization;

(ii) approved for construction by a federally registered planning authority; and

(iii) planned to interconnect with an incumbent electric utility’s transmission facilities.

(b) An incumbent electric utility may waive its right to construct, own, and maintain an electric transmission line by providing notice to the federally registered planning authority.

(2) If an incumbent electric utility intends to construct, own, and maintain an electric transmission line in accordance with subsection (1)(a), the incumbent electric utility shall provide notice to the federally registered planning authority of its intent within 120 days after the federally registered planning authority’s approval of the project.

(3) If an electric transmission line constructed, owned, and maintained in accordance with subsection (1)(a) is connected between two separate incumbent electric utilities, the electric transmission line must be shared equally between the incumbent utilities, unless the incumbent utilities agree to different terms and conditions.

(4) Nothing in this section may be construed to limit, alter, or modify the authority of the commission to make findings relative to 69-3-109 and 69-3-201 as they relate to transmission facilities or to regulate utilities subject to Title 69, chapter 3.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.
Approved April 6, 2017

CHAPTER NO. 162

[HB 500]

AN ACT REVISING LAWS RELATED TO THE BOARD OF PUBLIC ACCOUNTANTS AND THE LICENSED PRACTICE OF ACCOUNTING; REVISING QUALIFICATIONS FOR CERTAIN OWNERS OF ACCOUNTING FIRMS; REVISING REGISTRATION REQUIREMENTS FOR NONRESIDENT ACCOUNTANTS; AMENDING SECTIONS 37-50-101, 37-50-301, 37-50-325, 37-50-330, AND 37-50-335, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-50-101, MCA, is amended to read:

“37-50-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Affiliated entity” means an entity owned, leased, or controlled by a firm through common employment or any other service arrangement, including but not limited to financial or investment services, insurance, real estate, and employee benefits services.

(2) “Agreed-upon procedures engagement” means an engagement performed in accordance with applicable attestation standards and in which a firm or person is engaged to issue a written finding that:

(a) is based on specific procedures that the specified parties agree are sufficient for their purposes;

(b) is restricted to the specified parties; and

(c) does not provide an opinion or negative assurance.

(3) “Attest” means providing the following services:

(a) an audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) a review of a financial statement to be performed in accordance with the statements on standards for accounting and review services;

(c) an examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements;

(d) an engagement to be performed in accordance with the auditing standards of the public company oversight board; and

(e) an *examination, other than an examination as provided in subsection (3)(c), a review, or an agreed-upon procedures engagement* to be performed in accordance with the statements on standards for attestation engagements.

(4) “Board” means the board of public accountants provided for in 2-15-1756.

(5) “Compilation” means providing a service to be performed in accordance with statements on standards for accounting and review services that presents, in the form of financial statements, information that is the representation of owners without undertaking to express any assurance on the statements.

(6) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) “Firm” means a sole practice, sole proprietorship, partnership, professional corporation, or limited liability company engaged in the practice of public accounting.

(8) “Home office” is the location specified by the client as the address where a service described in 37-50-325(4) is directed.

(9)(8) "Peer review" means a board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction and who are not affiliated with the person or firm being reviewed.

(10)(9) "Practice of public accounting" means performing or offering to perform, by a person licensed as a certified public accountant or holding a practice privilege under 37-50-325, for a client or potential client one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services as determined by the board;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

(11)(10) "Principal place of business" means the office location designated by the licensee for the purposes of substantial equivalency.

(12)(11) "Satellite office" means a secondary location of a registered public accounting firm.

(13)(12) "Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act or subsequent acts or that an individual certified public accountant's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency, the board shall take into account the qualifications without regard to the sequence in which the experience, education, and examination requirements were attained."

Section 2. Section 37-50-301, MCA, is amended to read:

"37-50-301. Illegal use of title. (1) It is not a violation of this chapter for a firm that is not registered under 37-50-335 and that does not have an office in this state to provide its professional services and to practice public accounting in this state and use the title "CPA" or "CPA firm" so long as it complies with the exemption requirements of 37-50-335(4).

(2) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current license as a certified public accountant under this chapter or qualifies for the practice privilege under 37-50-325.

(3) A firm may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the firm is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335 or meets the conditions to be exempt from registration as set forth in 37-50-335(4).

(4) A person or firm may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed certified public accountant", or any abbreviations likely to be confused with "CPA". However, a foreign accountant may use the title under which the foreign accountant is

generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

(5) A person may not sign or affix a firm name with any wording indicating that it is a firm composed of persons offering attest services and compilations unless the firm conforms to the requirements of 37-50-330 and ~~is registered as required under 37-50-335.~~

(6) A person may not assume or use the title or designation "certified public accountant" in conjunction with names indicating or implying that there is a firm or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide firm that has been formed subject to the provisions of 37-50-330 and ~~registered under 37-50-335.~~ However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner or co-owner."

Section 3. Section 37-50-325, MCA, is amended to read:

"37-50-325. Practice privilege for nonresident certified public accountant – rules. (1) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy's national qualification appraisal service or a successor organization has verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy is presumed to have qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a license of this state without the need to obtain a license under 37-50-302.

(b) A person who offers or renders professional services under this section, whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (1).

(2) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy's national qualification appraisal service or a successor organization has not verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy is presumed to have qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a license of this state without the need to obtain a license under 37-50-302 if the person obtains verification from the national association of state boards of accountancy's national qualification appraisal service that the person's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act of the American institute of certified public accountants/national association of state boards of accountancy.

(b) A person who has passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012, is exempt from the education requirements in the Uniform Accountancy Act or a subsequent act for purposes of this subsection (2).

(c) A person who offers or renders professional services under this subsection (2), whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required unless the person is ~~registered~~ *required to register* pursuant to 37-50-335. The person is subject to the requirements of subsections (3) and (4) and this subsection (2).

(3) A licensee of another state exercising the privilege under this section and the firm that employs that person, as a condition of the grant of this privilege:

(a) are subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) shall comply with this chapter and the board's rules;

(c) shall cease offering or rendering professional services in this state individually or on behalf of a firm if the license from the state of the person's principal place of business is no longer valid; and

(d) shall accept the appointment of the state board that issued the license as the agent upon whom process may be served in any action or proceeding by the board of public accountants against the licensee.

(4) A person who has been granted practice privileges under this section and who, for any client with its home office in this state, performs any attest services or compilations may do so only through a firm ~~registered under~~ *in compliance with 37-50-335.*"

Section 4. Section 37-50-330, MCA, is amended to read:

"37-50-330. Compliance with ownership requirements – firm registration. (1) A firm composed of certified public accountants that is engaged in the practice of public accounting may include persons who are not licensed as certified public accountants if:

(a) the firm designates an accountant who is licensed in this state or, in the case of a firm that practices under the practice privilege pursuant to 37-50-335, a licensee of another state who meets the requirements set out in 37-50-325(1) or (2) to be responsible for the proper registration of the firm;

(b) a simple majority of ownership in the firm, in terms of equity and voting rights, is held by accountants who are licensed in this state or in another substantially equivalent jurisdiction or meet the requirements of 37-50-325; and

(c) all persons with an ownership interest in the firm are *of good moral character and* individuals actively participating in the business of the firm or its affiliated entities.

(2) An accountant licensed in this state or a person qualifying for practice privileges under 37-50-325 who holds an ownership interest in a firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm is responsible for all attest or compilation services.

(3) A person licensed in this state and a person qualifying for practice privileges under 37-50-325 who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm must meet the competency requirements of 37-50-203(2)(a).

(4) (a) A firm that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.

(b) The board shall grant the firm a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a firm to reestablish compliance may not be less than 90 days from the date the board receives the firm's notice of noncompliance.

(c) The failure of a firm to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the firm's registration required by 37-50-335."

Section 5. Section 37-50-335, MCA, is amended to read:

"37-50-335. Registration of firms – exemptions. (1) All firms that establish or maintain offices in this state for the practice of public accounting shall register annually with the department.

~~(2) All firms that do not have an office in this state but perform attest services and compilations for a client having its home office in this state shall register annually with the department.~~

~~(3)(2) A fee may be charged for the annual registration of firms.~~

~~(3) Each firm that establishes or maintains satellite offices in this state for the practice of public accounting shall provide a list of the location of each satellite office in this state at the time of annual registration.~~

~~(4) A firm that does not have an office in this state may use the title "CPA" or "CPA firm" in this state without registering and may:~~

~~(a) offer or render attest services and compilations in this state if the firm:~~

~~(i) complies with the state's peer review and firm ownership qualifications;~~

~~(ii) performs the services through an individual with practice privileges under 37-50-325; and~~

~~(iii) has practice privileges that include offering or rendering attest and compilation services in the state where the firm has its principal place of business;~~

~~(4) A firm that is not subject to the requirements of subsection (2) may~~

~~(b) perform other professional services while using the title "CPA" or "CPA firm" in this state without registering with the department only other than attest services or compilations in this state if the firm:~~

~~(a)(i) it performs the services through a person with practice privileges under 37-50-325; and~~

~~(b)(ii) it can lawfully has practice privileges to perform the services in the state where persons with practice privileges have their the firm has its principal place of business.~~

~~(5) Each firm that establishes or maintains satellite offices in this state for the practice of public accounting shall provide a list of the location of each satellite office in this state at the time of annual registration."~~

Section 6. Effective date. [This act] is effective July 1, 2017.

Approved April 6, 2017

CHAPTER NO. 163

[SB 20]

AN ACT ELIMINATING A LAW REQUIRING THE COURT ADMINISTRATOR TO PREPARE AN INFORMATION TECHNOLOGY REPORT; AND AMENDING SECTION 3-1-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-702, MCA, is amended to read:

"3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

~~(3) report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future information technology applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521;~~

(4) recommend to the supreme court improvements in the judiciary;

(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

(6) administer state funding for district courts, as provided in chapter 5, part 9;

(7) administer and report on the child abuse court diversion pilot project provided in 41-3-305;

(8) administer the judicial branch personnel plan; and

(9) perform other duties that the supreme court may assign. (Subsection (7) terminates June 30, 2017--sec. 7, Ch. 376, L. 2015.)"

Approved April 7, 2017

CHAPTER NO. 164

[SB 81]

AN ACT REVISING LAWS REGARDING CORONERS; PROVIDING THAT HEALTH CARE INFORMATION REGARDING A DECEASED PATIENT MAY BE DISCLOSED TO A CORONER FOR USE IN THE CORONER'S INVESTIGATION; AND AMENDING SECTION 50-16-811, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-811, MCA, is amended to read:

"50-16-811. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(i);

(h) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(i) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or similar federal law; or

(j) *the patient is deceased and the coroner requires the health care information for the investigation of the death as provided in Title 46, chapter 4, part 1.*

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law."

Approved April 7, 2017

CHAPTER NO. 165

[SB 121]

AN ACT PROVIDING THAT BONA FIDE VOLUNTEER POSITIONS ARE NOT REPORTABLE TO THE TEACHERS' RETIREMENT SYSTEM; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTION 19-20-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the university system retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;

(d) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(e) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(f) the superintendent of public instruction or a person employed as a teacher or in an educational services capacity by the office of public instruction;

(g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;

(h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and

(i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 or 19-3-413 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the university system retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the university system retirement program under Title 19, chapter 21, and who

is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(i) is ineligible to be an active member of this system.

(9) (a) *A position is not reportable to the retirement system if the position is a bona fide volunteer position.*

(b) *A position is a bona fide volunteer position if all of the following criteria are met:*

(i) *The individual in the position receives no salary, stipend, remuneration of any kind, reimbursement of expenses, or in-kind benefits or services for service in the position. Employer payments of premiums for required insurance coverage directly related to the volunteer service, such as workers' compensation coverage or personal or professional liability coverage, does not constitute remuneration.*

(ii) *The position was not a paid position with the employer within the 12 months prior to being designated as a volunteer position by the employer.*

(iii) *The position does not become a paid position for at least 12 months following the employer's designation of the position as a volunteer position.*

(iv) *The employer does not have any other individual working as a paid employee in the same position while the position is designated as a volunteer position.*

(v) *The individual in the position does not perform work in the volunteer position in excess of:*

(A) *4 hours in a day, 12 hours in a week, and 312 hours in a fiscal year if the service is performed during regular business days of the employer; or*

(B) *312 hours in a fiscal year if the service is performed primarily at times other than during regular business days of the employer.*

(c) *The retirement system may require the employer to provide information and documentation to verify that a position designated as a volunteer position meets all requirements set forth in this subsection (9)."*

Section 2. Effective date. [This act] is effective July 1, 2017.

Approved April 7, 2017

CHAPTER NO. 166

[SB 149]

AN ACT REVISING WHEN STATE OFFICERS AND CANDIDATES MUST FILE BUSINESS DISCLOSURE STATEMENTS; ALLOWING CERTAIN INDIVIDUALS TO CERTIFY THAT BUSINESS DISCLOSURE INFORMATION REMAINS UNCHANGED; AND AMENDING SECTION 2-2-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-106, MCA, is amended to read:

"2-2-106. Disclosure. (1) (a) ~~Prior to December 15 of each even-numbered year, each state officer, holdover senator, supreme court justice, and district court judge~~ *state officer, holdover senator, supreme court justice, and district court judge* shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. ~~An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.~~

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business

disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) *The Except as provided in subsection (4), the statement must provide the following information:*

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) *An individual required to file a business disclosure statement may certify that the information required by subsection (2) has not changed from the most recent statement filed by the individual. The commissioner shall provide a certification form.*

~~(4)~~(5) The commissioner of political practices shall make the business disclosure statements *and certification forms* available to any individual upon request."

Approved April 7, 2017

CHAPTER NO. 167

[SB 151]

AN ACT REVISING INTERIM COMMITTEES; CREATING A LOCAL GOVERNMENT COMMITTEE AND AN EDUCATION COMMITTEE AND ESTABLISHING THE DUTIES OF THE COMMITTEES; PROVIDING FOR MEMBERSHIP OF THE LOCAL GOVERNMENT COMMITTEE; REASSIGNING INTERIM COMMITTEE FUNCTIONS; AMENDING SECTIONS 5-5-202, 5-5-211, AND 5-5-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Local government committee. There is a local government committee. The committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The local government committee shall:

(1) act as a liaison with local governments;

(2) promote and strengthen local government through recognition of the principle that strong communities with effective, democratic governmental institutions are one of the best assurances of a strong Montana;

(3) bring together representatives of state and local government for consideration of common problems;

(4) provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;

(5) identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;

(6) promote concise, consistent, and uniform regulation for local government;

(7) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;

(8) review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;

(9) make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:

(a) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;

(b) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;

(c) methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and

(d) training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government;

(10) conduct interim studies as assigned pursuant to 5-5-217; and

(11) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210.

Section 2. Section 5-5-202, MCA, is amended to read:

“5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, ~~and state-tribal relations~~ *state-tribal relations committee*, and *local government* committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

(a) economic affairs committee;

(b) education ~~and local government~~ committee;

(c) children, families, health, and human services committee;

(d) law and justice committee;

(e) energy and telecommunications committee;

(f) revenue and transportation committee;

(g) state administration and veterans' affairs committee; and

(h) water policy committee.

(3) An interim committee, *the local government committee*, or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee. If there is an entity that is attached to an agency for administrative purposes under the jurisdiction of an interim committee and another interim committee has a justification to seek jurisdiction and petitions the legislative council, the

legislative council may assign that entity to the interim committee seeking jurisdiction unless otherwise provided by law.”

Section 3. Section 5-5-211, MCA, is amended to read:

“5-5-211. Appointment and composition of interim committees. (1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to 5-5-234 and ~~subsection subsections~~ (5)(b) and (5)(c) of this section, the composition of each interim committee must be as follows:

(i) four members of the house, two from the majority party and two from the minority party; and

(ii) four members of the senate, two from the majority party and two from the minority party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from the majority party and the minority party.

(c) *For fiscal years 2018 and 2019, the legislative council may request the appointment to the local government committee of no fewer than four members and up to eight members, with membership from the house and senate and majority and minority parties in equal numbers.*

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee and at least one member from the joint subcommittee that considers the related agency budgets. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee or the environmental quality council may create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.”

Section 4. Section 5-5-224, MCA, is amended to read:

“5-5-224. Education and local government interim committee. (1) ~~The education and local government interim committee shall act as a liaison with local governments. The education and local government interim committee~~ has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) state board of education;
 - (b) board of public education;
 - (c) board of regents of higher education; and
 - (d) office of public instruction.
- (2) The committee shall:

- (a) provide information to the board of regents in the following areas:
 - (i) annual budget allocations;
 - (ii) annual goal statement development;
 - (iii) long-range planning;
 - (iv) outcome assessment programs; and
 - (v) any other area that the committee considers to have significant educational or fiscal policy impact;
- (b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;
- (c) periodically review the results of outcome assessment programs;
- (d) develop mechanisms to ensure strict accountability of the revenue and expenditures of the university system;
- (e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;
- (f) act as a liaison between both the legislative and executive branches and the board of regents; *and*
- (g) encourage cooperation between the legislative and executive branches and the board of regents;
- (h) promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;
- (i) bring together representatives of state and local government for consideration of common problems;
- (j) provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;
- (k) identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;
- (l) promote concise, consistent, and uniform regulation for local government;
- (m) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;
- (n) review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;
- (o) make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:
 - (i) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;
 - (ii) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;
 - (iii) methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and
 - (iv) training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and
- (p) conduct interim studies as assigned.”

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 1].

Section 7. Effective date. [This act] is effective on passage and approval.
Approved April 7, 2017

CHAPTER NO. 168

[SB 178]

AN ACT PROVIDING THAT A PRIMARY ELECTION FOR A COUNTY NONPARTISAN OFFICE MUST BE HELD IF MORE THAN TWO CANDIDATES FILE FOR THE OFFICE; AND AMENDING SECTIONS 13-14-115 AND 13-14-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-14-115, MCA, is amended to read:

“13-14-115. Preparation and distribution of nonpartisan primary ballots – determination on conducting primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated “nonpartisan primary ballots”. The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) ~~The~~ *Except as provided in subsection (2)(b), the* election administrator of a political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:

(i) ~~the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and~~

(ii) ~~the number of candidates in excess of three times the number to be elected is not more than one for any (i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and~~

(ii) ~~the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.~~

(b) *The election administrator may determine that a primary election for a nonpartisan county office need not be held if fewer than three candidates have filed for that office.*

(b)(c) ~~If the election administrator determines that a municipal primary election must be held pursuant to subsection (2)(a) or (2)(b) of this section for a local nonpartisan office, the election administrator shall conduct the primary election only for the local nonpartisan offices that have candidates filed that have a sufficient number of candidates that have filed to be elected to that office in excess of two times the number to be elected to that office.~~

(e)(d) ~~If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a) or (2)(b), or (2)(c) for a local nonpartisan office, the administrator shall give notice to the governing body that a primary election will not be held for that office.~~

(3) ~~The governing body may require that a primary election be held for a local nonpartisan office if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held for that office.”~~

Section 2. Section 13-14-117, MCA, is amended to read:

“13-14-117. Placing names on ballots for general election. (1) ~~Except as provided in subsection (2), the two candidates for nomination equal to twice the number to be elected at the general election to an office who receive the highest number of votes cast at the primary are the nominees for the office and qualify to have their names placed on the general election ballot. If the~~

number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115(2), a local or county nonpartisan portion of a primary election for an office is not held, then all candidates who filed for an the office are nominees for the office and qualify to have their names placed on the general election ballot.”

Approved April 7, 2017

CHAPTER NO. 169

[SB 219]

AN ACT EXEMPTING CERTAIN PARCELS OF LAND USED TO PROVIDE SECURITY FOR MORTGAGES, LIENS, OR TRUST INDENTURES FROM THE REQUIREMENTS OF THE MONTANA SUBDIVISION AND PLATTING ACT; AMENDING SECTION 76-3-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-201, MCA, is amended to read:

“76-3-201. Exemption for certain divisions of land – fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. *Except as provided in subsection (4), a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.*

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.

(4) *If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of this chapter.*

(4)(5) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2017

CHAPTER NO. 170

[HB 62]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO WORK COOPERATIVELY WITH THE OFFICE OF STATE PUBLIC DEFENDER TO COLLECT COURT-IMPOSED COSTS FOR PUBLIC DEFENDER SERVICES; REQUIRING THE OFFICE OF COURT ADMINISTRATOR TO PREPARE AND PROVIDE A REPORT CONCERNING ASSESSED COSTS; REQUIRING THE DEPARTMENT OF REVENUE TO DEPOSIT COLLECTIONS IN THE GENERAL FUND; REQUIRING A COURT TO NOTIFY THE OFFICE OF STATE PUBLIC DEFENDER OF ANY MODIFICATION TO ASSESSED COSTS; AMENDING SECTION 46-8-113, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-8-113, MCA, is amended to read:

“46-8-113. Payment by defendant for assigned counsel – costs to be filed with court – collection of unpaid costs. (1) Subject to the provisions of subsections (2) and (3), as part of or as a condition of a sentence that is imposed under the provisions of this title, the court shall determine whether a convicted defendant should pay the costs of counsel assigned to represent the defendant as follows:

(a) If the defendant pleads guilty prior to trial:

(i) to one or more misdemeanor charges and no felony charges, the cost of counsel is \$250; or

(ii) to one or more felony charges, the cost of counsel is \$800.

(b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal trial. *The Upon request, the office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred for the trial.*

(2) ~~(a) Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).~~ *The office of the court administrator shall prepare a single combined report for each court assessing costs under this section by individual defendant and provide a copy of the report to the office of state public defender on a monthly basis. The report must include available information to personally identify the defendant.*

(b) *The office of state public defender shall:*

(i) notify the department of revenue of the defendant's unpaid costs and provide the department of revenue with the defendant's full name, social security number, and address and the amount of the defendant's unpaid costs; and

(ii) work cooperatively with the department of revenue to collect the defendant's unpaid costs.

(c) The department of revenue shall collect the defendant's unpaid costs assessed under this section. All costs collected by the department of revenue or the office of state public defender if the office receives or collects any costs owed under this section must be deposited in the state general fund and clearly credited against any balance owed by a defendant.

(d) The office of the court administrator, office of state public defender, and department of revenue shall develop a mutually agreed-upon report format and procedures for ensuring the timely and accurate transfer of information to collect unpaid costs assessed under this section.

(3) In any proceeding for the determination of whether a defendant is or will be able to pay the costs of counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform the defendant that purposely false or misleading statements by the defendant may result in criminal charges against the defendant.

(4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay the costs imposed by subsection (1). The court may find that the defendant is able to pay only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(5) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit reduce all or part of the amount due in costs or modify the method of payment. The court shall notify the office of state public defender of any reduction to the amount due.

(6) A defendant's obligation to make payments for the cost of counsel is suspended during periods of incarceration.

(7) Any costs imposed under this section must be included in the court's judgment."

Section 2. Effective date. [This act] is effective July 1, 2017.

Section 3. Applicability. [This act] applies to costs assessed against a defendant on or after July 1, 2017.

Approved April 7, 2017

CHAPTER NO. 171

[HB 273]

AN ACT REVISING CONCEALED WEAPONS LAWS; PROVIDING THAT PERMANENT LAWFUL RESIDENTS WHO ARE NOT CITIZENS OF THE UNITED STATES MAY APPLY FOR A PERMIT TO CARRY A CONCEALED WEAPON; AMENDING SECTION 45-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-321, MCA, is amended to read:

“45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen or *permanent lawful resident* who is 18 years of age or older and who holds a valid Montana driver’s license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant’s arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally disordered, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally disordered, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2017

CHAPTER NO. 172

[HB 288]

AN ACT AMENDING FILING FEE REQUIREMENTS FOR PRESIDENTIAL PREFERENCE PRIMARY ELECTIONS; AND AMENDING SECTIONS 13-10-202, 13-10-404, AND 13-10-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-202, MCA, is amended to read:

"13-10-202. Filing fees. Filing fees are as follows:

(1) for offices having an annual salary of \$2,500 or less and candidates for the legislature, \$15;

(2) for county offices having an annual salary of more than \$2,500, 0.5% of the total annual salary;

(3) for president in a presidential preference primary, an amount equivalent to the filing fee required for a United States senate candidate;

(4) for other offices having an annual salary of more than \$2,500, 1% of the total annual salary;

(5) for offices in which compensation is paid in fees, \$10;

(6) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required."

Section 2. Section 13-10-404, MCA, is amended to read:

"13-10-404. Placement of candidate on primary ballot – methods of qualification – filing fee. (1) Before an individual intending to qualify as a presidential candidate may qualify for placement on the ballot, the individual shall qualify by one or more of the following methods:

(1)(a) The individual has submitted a declaration for nomination that is signed by the candidate or an authorized election official to the secretary of state pursuant to 13-10-201(2) and has been nominated on petitions with the verified signatures of at least 500 qualified electors. The secretary of state shall prescribe the form and content of the petition.

(2)(b) The individual has submitted a declaration for nomination to the secretary of state pursuant to 13-10-201, and the secretary of state has determined, by the time that declarations for nomination are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq.

(2) *Except as provided by 13-10-201(3), the individual's declaration for nomination submitted pursuant to subsection (1) of this section must be accompanied by the filing fee set in 13-10-202(3).*"

Section 3. Section 13-10-405, MCA, is amended to read:

"13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(7). ~~A filing fee is not required.~~ The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state by the filing deadline prescribed in 13-10-201(7)."

Approved April 7, 2017

CHAPTER NO. 173

[HB 422]

AN ACT GENERALLY REVISING LAWS RELATED TO LOCAL GOVERNMENT; WITHHOLDING CERTAIN PAYMENTS TO A LOCAL GOVERNMENT UNDER CERTAIN CIRCUMSTANCES; REQUIRING THE ATTORNEY GENERAL TO REVIEW COMPLAINTS CONCERNING THE ALLEGED OFFICIAL MISCONDUCT OF LOCAL GOVERNMENT PUBLIC OFFICERS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-517, 15-1-121, 15-36-331, 15-36-332, 15-37-117, 15-39-110, AND 20-9-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Official misconduct – evidential review. The attorney general shall review a complaint referred from a county attorney concerning alleged misconduct of a local government public officer pursuant to [section 2] or an independent complaint made to the attorney general concerning the alleged misconduct of a local government public officer and any evidence concerning the officer's alleged misconduct. After reviewing the complaint, the attorney general may instruct the county attorney to diligently prosecute the officer as provided by 2-15-501(5), bring an action against the officer as provided in 45-7-401, or decline to prosecute the officer.

Section 2. Referral of complaint. If a county attorney receives a complaint concerning official misconduct as provided in 45-7-401 of a local government public officer and the county attorney does not commence an action pursuant to 45-7-401(3), the county attorney must refer the complaint and any relevant evidence for the attorney general's review as provided by [section 1] within 90 days of the receipt of the complaint.

Section 3. Section 2-7-517, MCA, is amended to read:

“2-7-517. Penalties – rules to establish fine. (1) ~~When~~ *Except as provided in 15-1-121(12)(b),* when a local government entity has failed to file a report as required by 2-7-503(1) or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

(3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

(4) The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity’s control.

(5) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section.”

Section 4. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment – purpose – appropriation.

(1) As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government’s share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

- (iv) 61-3-317;
- (v) 61-3-321;
- (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
- (vii) Title 61, chapter 3, part 7;
- (viii) 5% of the fees collected under 61-10-122;
- (ix) 61-10-130;
- (x) 61-10-148; and
- (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-9-506; and
 - (iv) 27-9-103;
- (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;
- (g) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
- (h) late filing fees pursuant to 61-3-220;
- (i) title and registration fees pursuant to 61-3-203;
- (j) veterans' cemetery license plate fees pursuant to 61-3-459;
- (k) county personalized license plate fees pursuant to 61-3-406;
- (l) special mobile equipment fees pursuant to 61-3-431;
- (m) single movement permit fees pursuant to 61-4-310;
- (n) state aeronautics fees pursuant to 67-3-101; and
- (o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.
- (3) (a) Except as provided in subsection (3)(b), the total amount received by each local government in the prior fiscal year as an entitlement share payment under this section is the base component for the subsequent fiscal year distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. Subject to subsection (3)(b), the sum of all local governments' base components is the fiscal year entitlement share pool.
- (b) For fiscal year 2016, the fiscal year entitlement share pool is reduced by \$1,049,904.
- (4) (a) Subject to subsection (3)(b), the base entitlement share pool must be increased annually by an entitlement share growth rate as provided for in this subsection (4). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year.
- (b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the next fiscal year in the following manner:
 - (i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources

referred to in subsections (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporate income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.25.

(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:

(A) the sum of the first factor plus the second factor; or

(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

(iii) In no instance can the entitlement growth factor be less than 1. Subject to subsection (4)(b)(iv), the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

(iv) For fiscal year 2016, the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment minus \$1,049,904 to determine the subsequent fiscal year payment.

(5) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (8). The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

(6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2) for local governments, the funding provided for in subsection (8) of this section, and the amounts determined under 15-1-123(4) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Except for the distribution made under 15-1-123(2)(b), the distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(4), if a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any funding. If a tax increment financing district referred to in subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

(b) Except for the reimbursement made under 15-1-123(4)(b), one-half of the payments provided for in this subsection (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment financing districts is as follows:

Deer Lodge	TIF District 1	\$ 2,833
Deer Lodge	TIF District 2	2,813
Flathead	Kalispell - District 2	4,638
Flathead	Kalispell - District 3	37,231
Flathead	Whitefish District	148,194
Gallatin	Bozeman - downtown	31,158
Missoula	Missoula - 1-1C	225,251
Missoula	Missoula - 4-1C	30,009
Silver Bow	Butte - uptown	255,421

(9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from tax increment financing districts, from countywide transportation block grants, or from countywide retirement block grants.

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base component, the entitlement share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) (a) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1.

(b) *A payment required pursuant to this section must be withheld if a local government:*

(i) *fails to meet a deadline established in 2-7-503(1), 7-6-611(2), 7-6-4024(3), or 7-6-4036(1); and*

(ii) *fails to remit any amounts collected on behalf of the state as required by 15-1-504 or any other amounts owed to the state or another taxing jurisdiction, as otherwise required by law, within 45 days of the end of a month.*

(c) *A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:*

(i) *file a financial report required by 15-1-504;*

(ii) *remit any amounts collected on behalf of the state as required by 15-1-504; or*

(iii) *remit any other amounts owed to the state or another taxing jurisdiction."*

Section 5. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax allocated in 15-36-304(7)(b) for the oil and gas natural resource distribution account established in 90-6-1001(1) must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%

Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%
Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%
Prairie	40.38%
Richland	47.47%
Roosevelt	45.71%
Rosebud	39.33%
Sheridan	47.99%
Stillwater	53.51%
Sweet Grass	61.24%
Teton	46.1%
Toole	57.61%
Valley	51.43%
Wibaux	49.16%
Yellowstone	46.74%
All other counties	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;

(iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;

(iv) 2.99% to the orphan share account established in 75-10-743;

(v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108; and

(vi) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

- (i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;
- (ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;
- (iii) 2.95% to the orphan share account established in 75-10-743;
- (iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108; and
- (v) all remaining proceeds to the state general fund.

(5) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

- (a) file a financial report required by 15-1-504;
- (b) remit any amounts collected on behalf of the state as required by 15-1-504; or
- (c) remit any other amounts owed to the state or another taxing jurisdiction.”

Section 6. Section 15-36-332, MCA, is amended to read:

“15-36-332. (Temporary) Distribution of taxes to taxing units – appropriation. (1) (a) Subject to 20-9-310 and subsection (9) of this section, by the dates referred to in subsection (6) of this section, the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) *By Except as provided by subsection (9), by the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection (7) of this section.*

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%

Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d) and subject to the provisions of 20-9-310.

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas production taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district as provided in 20-9-310.

(6) Subject to 20-9-310 *and subsection (9) of this section*, the department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(8) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.

(9) *A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:*

(a) *file a financial report required by 15-1-504;*

(b) *remit any amounts collected on behalf of the state as required by 15-1-504; or*

(c) *remit any other amounts owed to the state or another taxing jurisdiction.*

(Terminates June 30, 2020--sec. 38, Ch. 400, L. 2013.)

15-36-332. (Effective July 1, 2020) Distribution of taxes to taxing units – appropriation. (1) (a) *By Except as provided by subsection (9), by the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.*

(b) *By Except as provided by subsection (9), by the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection (7) of this section.*

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%

Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) ~~The~~ *Except as provided by subsection (9),* the department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(8) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.

(9) *A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:*

(a) *file a financial report required by 15-1-504;*

(b) *remit any amounts collected on behalf of the state as required by 15-1-504; or*

(c) remit any other amounts owed to the state or another taxing jurisdiction.”

Section 7. Section 15-37-117, MCA, is amended to read:

“15-37-117. (Temporary) Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 17-2-124, be allocated as follows:

(a) to the credit of the general fund of the state, 47% of total collections each year;

(b) to the state special revenue fund to the credit of the hard-rock mining impact trust account established in 90-6-304(2), 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund established in 82-4-312, 8.5% of total collections each year;

(d) to the natural resources operations state special revenue account established in 15-38-301, 7% of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 35% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.

(4) *A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:*

(a) file a financial report required by 15-1-504;

(b) remit any amounts collected on behalf of the state as required by 15-1-504; or

(c) remit any other amounts owed to the state or another taxing jurisdiction. (Terminates June 30, 2027--sec. 5, Ch. 387, L. 2015.)

15-37-117. (Effective July 1, 2027) Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 17-2-124, be allocated as follows:

(a) to the credit of the general fund of the state, 57% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund established in 82-4-312, 8.5% of total collections each year;

(d) to the natural resources operations state special revenue account established in 15-38-301, 7% of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.

(4) *A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:*

(a) *file a financial report required by 15-1-504;*

(b) *remit any amounts collected on behalf of the state as required by 15-1-504; or*

(c) *remit any other amounts owed to the state or another taxing jurisdiction."*

Section 8. Section 15-39-110, MCA, is amended to read:

"15-39-110. Distribution of taxes. (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through (9).

(b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection (10).

(2) The percentage of the tax determined under subsection (1)(a) and specified in subsections (3) through (9) is allocated according to the following schedule:

(a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108;

(b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360; and

(d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360.

(3) For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection (10).

(4) For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection (10).

(5) For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection (10).

(6) For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection (10).

(7) For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection (10).

(8) For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection (10).

(9) For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (10).

(10) For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through (9) are allocated according to the following schedule:

(a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108;

(b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360.

(11) ~~The~~ *Except as provided by subsection (14), the* department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.

(b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.

(12) (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value for determining school district debt limits under 20-9-406.

(b) The percentage amount of the gross yield of value determined under subsection (12)(a) must be treated as assessed value under 15-8-111 for the purposes of local government debt limits and other bonding provisions as provided by law.

(13) The bentonite tax proceeds are statutorily appropriated, as provided in 17-7-502, to the department for distribution as provided in this section.

(14) *A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:*

(a) *file a financial report required by 15-1-504;*

(b) *remit any amounts collected on behalf of the state as required by 15-1-504; or*

(c) *remit any other amounts owed to the state or another taxing jurisdiction."*

Section 9. Section 20-9-310, MCA, is amended to read:

"20-9-310. (Temporary) Oil and natural gas production taxes for school districts – allocation and limits. (1) Except as provided in subsection (6), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) ~~The~~ *Except as provided by 15-36-332(9), the* department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in 20-9-520.

(4) (a) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) to school districts that are directly impacted by oil and natural gas development, but that receive insufficient oil and natural gas revenue to address the oil and natural gas development impacts. The office of public instruction shall adopt administrative rules to establish a process, criteria, and a mechanism for distribution under this subsection (4), using the negotiated rulemaking process set forth in the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1.

(b) In developing administrative rules, the office of public instruction shall establish two independent negotiated rulemaking committees to consider issues for the purpose of reaching a consensus to develop proposed rules for the distribution of the funds under this subsection (4).

(c) The members of the first negotiated rulemaking committee appointed by the office of public instruction must include public school officials and public school employees from school districts that are located in or are immediately adjacent to a county in which oil and natural gas production taxes are generated and professional organizations representing these public school officials and employees. This committee shall transmit proposed rules regarding distribution of 50% of the funds available under this subsection (4) in accordance with 2-5-108.

(d) The members of the second negotiated rulemaking committee appointed by the office of public instruction must include public school officials and public school employees from school districts around the state and professional organizations representing these public school officials and employees. This committee shall transmit proposed rules regarding the distribution of the remaining 50% of the funds available under this subsection (4) in accordance with 2-5-108.

(5) (a) Subject to the limitation in subsection (1) and the conditions in subsection (5)(b), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.

(b) Except as provided in subsection (5)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:

(i) the trustees shall levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;

(ii) the mills levied under subsection (5)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and

(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (5)(b)(i) must be added to the number of mills calculated in 20-9-141(2).

(c) The provisions of subsection (5)(b) do not apply to the following:

(i) a district that has a maximum general fund budget of less than \$1 million;

(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(iii) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which the provisions of this subsection (5) would otherwise apply; or

(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the

district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(6) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.

(7) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall. (Terminates June 30, 2019--sec. 7, Ch. 433, L. 2015.)

20-9-310. (Effective July 1, 2019) Oil and natural gas production taxes for school districts – allocation and limits. (1) Except as provided in subsection (6), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) *The Except as provided by 15-36-332(9),* the department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in 20-9-520.

(4) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the retained amount must be distributed to the counties in proportion to a county's oil and natural gas production taxes for the preceding 3 years compared to the total of all counties' oil and natural gas production taxes for the preceding 3 years. Funds distributed must be deposited in a county's county school oil and natural gas impact fund provided for in 20-9-518.

(5) (a) Subject to the limitation in subsection (1) and the conditions in subsection (5)(b), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.

(b) Except as provided in subsection (5)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:

(i) the trustees shall levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;

(ii) the mills levied under subsection (5)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and

(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (5)(b)(i) must be added to the number of mills calculated in 20-9-141(2).

(c) The provisions of subsection (5)(b) do not apply to the following:

(i) a district that has a maximum general fund budget of less than \$1 million;

(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(iii) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which the provisions of this subsection (5) would otherwise apply; or

(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(6) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.

(7) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall."

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 5, and the provisions of Title 2, chapter 15, part 5, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 4, part 27, and the provisions of Title 7, chapter 4, part 27, apply to [section 2].

Section 11. Effective date. [This act] is effective July 1, 2017.

Approved April 7, 2017

CHAPTER NO. 174

[HB 447]

AN ACT ALLOWING THE CANCELLATION OF UNCONTESTED MUNICIPAL GENERAL ELECTIONS FOR CITY OFFICERS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 7-4-4101, 7-4-4102, AND 7-4-4103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Cancellation of general election. (1) The governing body of a municipality may cancel a general election for the election of a municipal officer by resolution after notification by the election administrator pursuant to the provisions of 13-1-403 if the number of candidates filing for election is equal to or less than the number of positions to be filled.

(2) For the purposes of this section, "municipal officer" means a person holding a position with a municipality that is ordinarily filled by election.

Section 2. Section 7-4-4101, MCA, is amended to read:

"7-4-4101. Officers of city of first class. (1) The officers of a city of the first class consist of:

- (a) one mayor;
- (b) two city council members from each ward; and
- (c) one city judge.

(2) ~~The~~ *Except as provided by [section 1]*, officers listed in subsection (1) must be elected by the qualified electors of the city, ~~as provided in this part.~~

(3) There may also be appointed by the mayor, with the advice and consent of the council:

- (a) one city attorney;
- (b) one city clerk;
- (c) one city treasurer or finance officer or one city clerk-treasurer;
- (d) one chief of police;
- (e) one assessor;
- (f) one street commissioner;
- (g) one city jailer;
- (h) one city surveyor; and
- (i) any other officers necessary to carry out the provisions of this title.

(4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation."

Section 3. Section 7-4-4102, MCA, is amended to read:

"7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:

- (a) one mayor;
- (b) two city council members from each ward; and
- (c) one city judge.

(2) ~~The~~ *Except as provided by [section 1]*, officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city, ~~as provided in this part.~~

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge must be filled by appointment by the governing body or by election or may appoint a justice of the peace or the city judge of another city as judge of the city court as provided in 3-11-205.

(4) There may also be appointed by the mayor, with the advice and consent of the council:

- (a) one city attorney;
- (b) one city clerk, who is ex officio city assessor;

- (c) one city treasurer or one city clerk-treasurer;
 - (d) one chief of police; and
 - (e) any other officers necessary to carry out the provisions of this title.
- (5) The city council may prescribe the duties of all city officers and fix their compensation.”

Section 4. Section 7-4-4103, MCA, is amended to read:

“7-4-4103. Officers of towns. (1) The officers of a town consist of:

- (a) one mayor;
- (b) two city council members from each ward; and
- (c) one city judge.

(2) ~~The~~ *Except as provided by [section 1],* the officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town; ~~as provided in this part.~~

(3) The governing body of the town may by ordinance determine that the office of city judge must be filled either by election or by appointment or may appoint a justice of the peace or the city judge of another city to be judge of the city court as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:

(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;

(b) one marshal, who may be ex officio street commissioner; and

(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title.”

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 44, and the provisions of Title 7, chapter 5, part 44, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2017

CHAPTER NO. 175

[SB 152]

AN ACT REVISING LAWS RELATED TO STATE EMPLOYEES; REVISING WHAT CONSTITUTES BASE SALARY AND COMPENSATION; REVISING DEFINITIONS OF CERTAIN WORKERS AND EMPLOYEES; REVISING THE EMPLOYER CONTRIBUTION TO GROUP BENEFITS; ELIMINATING THE OPTION TO DEPOSIT CERTAIN EMPLOYEE-DESIGNATED PORTIONS OF THE EMPLOYER CONTRIBUTION TO GROUP BENEFITS INTO A FLEXIBLE SPENDING ACCOUNT; AMENDING SECTIONS 2-18-101, 2-18-601, 2-18-701, 2-18-703, AND 2-18-812, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

“2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) “Agency” means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) “Base salary” means the ~~amount of compensation~~ *base hourly pay rate annualized* paid to an employee, excluding: *overtime and longevity.*

- (a) ~~state contributions to group benefits provided in 2-18-703;~~
- (b) ~~overtime;~~
- (c) ~~fringe benefits as defined in 39-2-903; and~~
- (d) ~~the longevity allowance provided in 2-18-304.~~

(3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to determine the pay band for an occupation.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Broadband classification plan" means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.

(6) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.

(7) "Compensation" means the annual or hourly wage or salary and includes the ~~state contribution to group benefits under the provisions of 2-18-703~~ *longevity allowance provided in 2-18-304 and leave and holiday benefits provided in part 6 of this chapter.*

(8) "Competencies" means sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a position.

(9) "Competitive pay zone" means that portion of the pay range for a band level of an occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation.

(10) "Department" means the department of administration created in 2-15-1001.

(11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104.

(b) The term does not include a student intern.

(12) "Job evaluation factor" means a measure of the complexities of the predominant duties of a position.

(13) "Job sharing" means the sharing by two or more persons of a position.

(14) "Market salary" means the median base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(15) "Occupation" means a generalized family of positions having substantially similar duties and requiring similar qualifications, education, and experience.

(16) "Pay band" means a wide salary range covering a number of different occupations.

(17) "Permanent employee" means an employee who is designated by an agency as permanent, *who was hired through a competitive selection process unless excepted from the competitive process by law*, and who has attained or is eligible to attain permanent status.

(18) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(19) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(20) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(21) "Program" means a combination of planned efforts to provide a service.

(22) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and

who may be recalled without the loss of rights or benefits accrued during the preceding season.

(23) "Short-term worker" means a person who:

(a) *is may be* hired by an agency *without using a competitive hiring process* for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into ~~another~~ *a permanent* position by the agency without a competitive selection process; ~~and~~

(e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter ~~or the group insurance benefits provided in part 7 of this chapter;~~ *and*

(f) *may be discharged without cause.*

(24) "Student intern" means a person who:

(a) has been accepted in or is currently enrolled in an accredited school, college, or university and *is may be* hired ~~directly~~ by an agency in a student intern position *without using a competitive selection process;*

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter ~~or the group insurance benefits provided in part 7 of this chapter;~~ *and*

(f) *may be discharged without cause.*

(25) "Telework" means a flexible work arrangement where a designated employee may work from home within the state of Montana or an alternative worksite within the state of Montana 1 or more days a week instead of physically traveling to a central workplace.

(26) "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) ~~performs temporary duties or permanent duties on a temporary basis;~~

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; *and*

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(4) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

(6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent contractors or hired under personal services contracts, and student interns.

(7) "Full-time employee" means an employee who normally works 40 hours a week.

(8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(9) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(10) "Part-time employee" means an employee who normally works less than 40 hours a week.

(11) "Permanent employee" means a permanent employee as defined in 2-18-101.

(12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(13) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(14) "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) *is may be* hired by a legislative agency *without using a competitive process* for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into ~~another~~ *a permanent* position by the agency without a competitive selection process; ~~and~~

(v) is not eligible to earn the leave and holiday benefits provided in this part ~~or the group insurance benefits provided in part 7; and~~

(vi) *may be discharged without cause.*

(15) "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (15)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

(16) "Student intern" means a student intern as defined in 2-18-101.

(17) "Temporary employee" means a temporary employee as defined in 2-18-101.

(18) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(19) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 3. Section 2-18-701, MCA, is amended to read:

"2-18-701. Definitions. As used in this part, the following definitions apply:

(1) "Dependent" has the meaning provided in 33-22-140.

(2) (a) "Employee", as the term applies to a person employed in the executive, judicial, or legislative branches of state government, means:

(i)(a) a permanent full-time employee, as provided in 2-18-601;

(ii)(b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

(iii)(c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(iv)(d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(v)(e) elected officials;

(vi)(f) officers and permanent employees of the legislative branch;

(vii)(g) judges and permanent employees of the judicial branch;

(viii)(h) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

(ix)(i) a temporary full-time employee, as provided in 2-18-601:

(A)(i) who is regularly scheduled to work more than 6 months a year;

(B)(ii) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(C)(iii) whose temporary status is defined through collective bargaining;

(x)(j) a temporary part-time employee, as provided in 2-18-601:

(A)(i) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

(B)(ii) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(C)(iii) whose temporary status is defined through collective bargaining;
and

(k) a full-time short-term worker, as provided in 2-18-101 and 2-18-601, who is in a position that does not recur each year;

(l) a part-time short-term worker, as provided in 2-18-101 and 2-18-601, who is regularly scheduled to work 20 hours or more a week in a position that does not recur each year; and

(xi)(m) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

(b) The term does not include a student intern, as defined in 2-18-101."

Section 4. Section 2-18-703, MCA, is amended to read:

“2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) (a) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~§887 a month from January 2015 through December 2015, §976 a month from January 2016 through December 2016, and \$1,054 a month from January 2017 through December 2017 2019.~~

(b) For employees defined in 2-18-701 and for members of the legislature, beginning January ~~2018~~ 2020 and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(c) For employees of the Montana university system, the employer contribution for group benefits is ~~§887 a month from July 2014 through June 2016 and~~ \$1,054 a month from July 2016 through the earlier of:

(i) June ~~2018~~ 2020; or

(ii) the month before the first month in which the excise tax under 26 U.S.C. 4980I applies.

(d) For employees of the Montana university system, beginning the earlier of July ~~2018~~ 2020 or the first month in ~~2018~~ 2020 in which the excise tax under 26 U.S.C. 4980I applies, and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(e) If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305 and to the protections of 2-18-1205. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

(c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by multiplying the average annual contribution for each employee

on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(iii) If a political subdivision has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

(5) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(6) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(7) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 5. Section 2-18-812, MCA, is amended to read:

"2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized – requirements. The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department shall maintain state employee group benefit plans on an actuarially sound basis.

(2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department shall deposit all reserve funds and premiums paid to a state employee group benefit plan account within the state self-insurance reserve fund, and the deposits must be expended for claims under the plan.

(4) The department shall deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan.

(5) The department shall deposit into the account provided for in subsection (3) all portions of a state employee's salary designated by the employee to be withheld for the purposes of flexible spending account benefits ~~as well as any employee-designated portion of the employer contribution for group benefits provided for in 2-18-703 that is not required to be used for mandatory or elected benefits~~. Income earned on the deposits must be retained within the account and used for the purposes provided in this subsection. The money deposited and income earned on the deposits must be used for:

(a) payment of claims made by the employee;

(b) payment of reasonable costs of administration of the flexible spending account program;

(c) offsetting losses of the flexible spending account program; and

(d) reducing administration fees collected from participants in the program.

(6) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

(7) Except as otherwise provided in Title 33, chapter 18, part 9, the provisions of Title 33 do not apply to the department when exercising the powers and duties provided for in this section.”

Section 6. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2017.

(2) [Section 4] and this section are effective on passage and approval.

Section 7. Retroactive applicability. [Section 4] applies retroactively, within the meaning of 1-2-109, to January 1, 2017.

Approved April 10, 2017

CHAPTER NO. 176

[SB 164]

AN ACT REVISING THE APPOINTMENT, DUTIES, AND QUALIFICATIONS OF MEMBERS OF THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL; ESTABLISHING DUTIES AND REPORTING REQUIREMENTS; AMENDING SECTIONS 90-4-402 AND 90-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-402, MCA, is amended to read:

“90-4-402. Appointment of council members by governor. (1) *The In accordance with subsections (6) through (8), the governor shall appoint at the beginning of each gubernatorial term two persons to serve as members of the council as provided in Public Law 96-501.*

(2) (a) An appointment of a council member by the governor is subject to the confirmation of the senate, except that the governor may appoint a council member to assume office before the senate meets in its next regular session to consider the appointment. A member ~~so~~ appointed *by the governor* is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment.

(b) If the senate does not confirm the appointment of a member *in accordance with subsection (2)(a)*, the governor shall make a new appointment *who is subject to confirmation by the senate.*

(3) A council member serves at the pleasure of the governor. The governor may remove a council member at any time and appoint a new member to the office. *If the governor removes a council member and appoints a new member to the office, the new member is subject to confirmation by the senate.*

(4) If a vacancy occurs in the office of a council member, the governor shall appoint, as soon as reasonably possible, a new member to serve at the pleasure of the governor. *If a vacancy occurs and the governor appoints a member to the office, the new member is subject to confirmation by the senate.*

(5) *If an appointment is made by the governor in accordance with subsections (2) through (4) when the senate is not in regular session, confirmation must occur during the next regular session.*

(6) *When making an appointment in accordance with subsection (1), the governor shall consider a potential candidate's previous experience, training, and education related to the duties and functions of the council and the priorities contained in Public Law 96-501.*

(7) (a) *The governor shall appoint members with experience or education in one or more of the following matters:*

(i) *economic, legal, social, and political aspects of energy production and distribution;*

(ii) *fish and wildlife management; or*

(iii) *the use, distribution, and protection of watersheds located in the Pacific Northwest.*

(b) *The governor shall consider potential members with an understanding of and familiarity with the impacts of members' actions on the electricity rates of Montana utilities and residents receiving their power supply from the Bonneville power administration.*

(8) *At least one member appointed to the council must be a resident in a county served in whole or in part by a Montana utility, as defined in 69-5-102, receiving at least one-third of its power supply from the Bonneville power administration.*

~~(5) The governor shall appoint the initial members within 30 days of March 12, 1981."~~

Section 2. Section 90-4-403, MCA, is amended to read:

"90-4-403. Duties of council members. The council members shall:

(1) *undertake the functions and duties prescribed by Public Law 96-501 and in applicable state law, including engaging with utilities receiving their power supply from the Bonneville power administration to promote an adequate, economical, and reliable power supply; and*

(2) *serve on a full- full-time or part-time basis as determined by the governor basis; and*

(3) *prepare and provide an annual report to the governor and to the legislature, as required by 5-11-210, and to each utility located in Montana receiving its power supply from the Bonneville power administration. The report must be completed by December 1 of each year and must detail council actions during the previous 12 months and the impacts of those actions on Montana utilities and residents receiving their power supply from the Bonneville power administration."*

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to appointments made on or after [the effective date of this act].

Approved April 10, 2017

CHAPTER NO. 177

[SB 222]

AN ACT PROHIBITING CERTAIN ANNUITY CONTRACTS FROM HAVING SURRENDER PENALTIES OR CHARGES ON CONTRACTS OLDER THAN 10 YEARS FROM THE DATE OF ISSUANCE; AMENDING SECTION 33-20-905, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Annuity penalty – 10-year prohibition. (1) An annuity may not charge a surrender penalty on an annuity contract after 10 years from:

(a) the date of issuance; or

(b) for contracts for which the annuitant voluntarily deposits a separate premium that was not required under the annuity contract, the date of each separate annuity premium deposit. Within 10 years after the separate deposit, the insurer may charge a surrender penalty for that deposit.

(2) An insurer must provide written notice to the annuitant of any surrender penalty imposed under the contract, including subsequent notices if the annuitant voluntarily contributes separate premium deposits under subsection (1)(b).

(3) For purposes of this section, the term “surrender penalty” means a surrender penalty, fee, or charge for the early withdrawal of funds from an annuity contract or for the cancellation of the annuity contract.

(4) This section applies to any annuity contract, including but not limited to annuity contracts under Title 30, chapter 10.

Section 2. Section 33-20-905, MCA, is amended to read:

“33-20-905. Standards for disclosure document and buyer’s guide.

(1) When the application for an annuity contract is taken in a face-to-face meeting, the applicant must be given, at or before the time of application, both the disclosure document and the buyer’s guide.

(2) (a) When the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant must be sent both the disclosure document and the buyer’s guide not later than 5 business days after the completed application is received by the insurer.

(b) When an application is received as a result of a direct solicitation through the mail, providing a disclosure document and a buyer’s guide in the mailing inviting prospective applicants to apply for an annuity contract satisfies the requirement that the disclosure document and buyer’s guide be provided not later than 5 business days after receipt of the application.

(c) When an application is received over the internet, taking reasonable steps to make the disclosure document and buyer’s guide available for viewing and printing on the insurer’s website satisfies the requirement that the disclosure document and the buyer’s guide be provided not later than 5 business days of receipt of the application.

(d) A solicitation for an annuity contract provided in other than a face-to-face meeting must include a statement that the proposed applicant may contact the commissioner’s office for a free annuity buyer’s guide, or an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer’s guide.

(3) When the disclosure document and buyer’s guide are not provided at or before the time of application, a free-look period of not less than 15 days must be provided for the applicant to return the annuity contract without penalty. This free-look period must run concurrently with any other free-look period provided under state law.

(4) At a minimum, the following information must be included in the disclosure document:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer’s name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including when appropriate:

(i) the guaranteed elements, nonguaranteed elements, and determinable elements of the contract and their limitations, if any, and an explanation of how the elements operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options both on a guaranteed and nonguaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract *within 10 years of issuance under [section 1]*;

(v) how values in the contract can be accessed;

(vi) the death benefit, if one is available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees with an explanation of how they apply; and

(e) information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(5) Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.”

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [section 1].

Section 4. Applicability. [This act] applies to annuity contracts issued or renewed on or after [the effective date of this act].

Approved April 10, 2017

CHAPTER NO. 178

[SB 58]

AN ACT REVISING INSURANCE UNFAIR TRADE PRACTICE PERTAINING TO CLAIM INQUIRIES LAWS; PROHIBITING AN INSURER FROM CONSIDERING AN INSURED'S CLAIMS INQUIRIES THAT RESULTED IN NO PAYMENT IN THE APPLICATION FOR, RENEWAL OF, AND CHANGE IN AN INSURANCE POLICY; AND AMENDING SECTION 33-18-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-210, MCA, is amended to read:

“33-18-210. Unfair discrimination and rebates prohibited for title, property, casualty, or surety insurance – exceptions – limitations. (1) Except as provided in subsections (3), (4), and (11)(a), a title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) Except as provided in subsections (3), (4), and (11)(a), an insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

- (a) rebate, discount, abatement, credit, or reduction of premium;
- (b) special favor or advantage; or
- (c) valuable consideration or inducement.

(3) The prohibitions in subsections (1) and (2) do not apply to a benefit provided for by a telematics agreement as provided in 33-23-221 through 33-23-226.

(4) The prohibitions under subsections (1) and (2) do not apply to an active, retired, or honorably separated member of the United States armed forces as described in 33-18-217(1)(a) or to a spouse, surviving spouse, dependent, or heir of a United States armed forces member as provided in 33-18-217.

(5) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(6) This section may not be construed as prohibiting the payment of commissions or other compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(7) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(8) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(9) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(10) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(11) (a) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual under a private passenger automobile policy based solely on adverse information contained in an individual's driving record that is 3 years old or older. An insurer may provide discounts to an insured under a private passenger automobile policy based on favorable aspects of an insured's claims history that is 3 years old or older.

(b) An insurer may not use more than the most recent 5 years of loss experience that is available when determining whether to refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available under a commercial automobile policy. An insurer may provide discounts to an insured under a commercial automobile policy based on favorable aspects of an insured's claims history that is 5 years old or older.

(c) As used in subsection (11)(a), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies.

(12) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

(13) (a) *An insurer that provides personal lines insurance for an insured may not consider the insured's inquiries or claims made to any insurer that did not result in a payment by any insurer in considering an application for, renewal of, or change in an insurance policy as defined in 33-15-102.*

(b) *This subsection (13) does not apply to an insurer's consideration of a claim that was the basis for a criminal or civil insurance fraud action by a state or regulatory enforcement entity.*

(c) (i) *For the purposes of this subsection (13), the term "personal lines insurance" means vehicle insurance under 33-1-206(1)(a) and property insurance under 33-1-210 that is sold by an insurer for personal, family, or household purposes.*

(ii) *The term does not include disability insurance or insurance for commercial, business, or professional services, products, or activities."*

Approved April 10, 2017

CHAPTER NO. 179

[SB 65]

AN ACT GENERALLY REVISING LAWS REGARDING HOUSING OPTIONS FOR OFFENDERS; ESTABLISHING A LEGISLATIVE POLICY REGARDING HOUSING OPTIONS FOR INDIVIDUALS LEAVING THE MONTANA STATE PRISON OR OTHER DEPARTMENT OF CORRECTIONS PROGRAMS; CREATING A SUPPORTIVE HOUSING GRANT PROGRAM TO BE ADMINISTERED BY THE BOARD OF CRIME CONTROL; ALLOWING THE DEPARTMENT TO PROVIDE HOUSING ASSISTANCE TO CERTAIN OFFENDERS; REQUIRING THE DEPARTMENT TO COLLECT CERTAIN INFORMATION; EXPANDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF CORRECTIONS AND THE BOARD OF CRIME CONTROL; AND AMENDING SECTIONS 46-23-1002 AND 53-1-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy – housing options after release. (1) It is the policy of the state of Montana that individuals released from the Montana state prison

or community corrections programs be afforded every reasonable opportunity to obtain permanent housing in order to increase the likelihood that the individuals will succeed in:

- (a) finding employment;
- (b) establishing ties to the community; and
- (c) avoiding recidivism and a return to prison or other corrections programs.

(2) In order to accomplish the purposes of this section, the department shall:

- (a) coordinate with local governments and local agencies to identify all available housing options within a community;
- (b) encourage efforts to increase available housing options; and
- (c) identify for each individual leaving the corrections system the community resources available to the individual to assist with housing needs.

Section 2. Supportive housing grant program. (1) Within the limits of available funds, the Montana board of crime control shall develop and administer a supportive housing grant program to improve access to housing for people reentering the community from the criminal justice system or who have a criminal history.

(2) Counties, cities or towns, and tribal governments are eligible to receive grant funding.

(3) Grant funds may be used to provide case management and housing placement services, support landlord engagement activities, hire housing specialists, and build or manage risk-mitigation funds to reimburse landlords for tenant-related property damages or expenses.

(4) In administering the supportive housing grant program, the board shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules as necessary to implement this section.

(5) (a) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purposes of administering the supportive housing grant program or any funds received pursuant to subsection (5)(b).

(b) The board may accept gifts, grants, and donations from other public or private sources, which must be used within the scope of this section.

Section 3. Rental vouchers. (1) If the department does not approve an offender's parole plan because the offender is unable to secure suitable living arrangements, the department may provide rental vouchers to the offender for a period not to exceed 3 months if the rental assistance will result in an approved parole plan.

(2) The voucher must be provided in conjunction with additional transition support that enables the offender to participate in programs and services, including but not limited to substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming.

Section 4. Section 46-23-1002, MCA, is amended to read:

"46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court; and

(4) *adopt rules to administer the rental voucher program the department may implement pursuant to [section 3].*"

Section 5. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) to carry out the purposes of 41-5-125;

(ii) for the siting, establishment, and expansion of prerelease centers;

(iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

(v) for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) *encourage efforts within the department and at the local level that would develop housing options and resource materials related to housing for individuals who are released from the Montana state prison or community corrections programs;*

(h) *maintain data on the number of individuals who are discharged from the adult correction services listed in 53-1-202 into a homeless shelter or a homeless situation;*

~~(g)~~(i) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

~~(h)~~(j) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

~~(i)~~(k) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(j)(l) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

~~(k)~~(m) administer youth correctional facilities;

~~(l)~~(n) provide supervision, care, and control of youth released from a state youth correctional facility; and

~~(m)~~(o) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on juvenile parole supervision.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.”

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 7. Codification instruction. (1) [Sections 1 and 3] are intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [sections 1 and 3].

(2) [Section 2] is intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [section 2].

Approved April 10, 2017

CHAPTER NO. 180

[SB 113]

AN ACT PROVIDING INCREASED TRANSPARENCY IN THE DISCLOSURE OF CHILD AND FAMILY SERVICES RECORDS; PROVIDING FOR THE DISCLOSURE OF RECORDS TO MEMBERS OF THE UNITED STATES CONGRESS AND MONTANA LEGISLATURE UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-205, MCA, is amended to read:

“41-3-205. Confidentiality – disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (8) (9) and (9) (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) ~~the news media, a member of the United States congress, or a state legislator~~; if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) *The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:*

(i) *the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;*

(ii) *the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.*

(iii) *before reviewing the records, the member:*

(A) *signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and*

(B) *receives from the department an orientation of the content and structure of the records.*

(b) *Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the member to view at a location determined by the department but may not be copied, recorded, photographed, or otherwise replicated by the member, and must remain solely in the department's possession.*

(c) *Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.*

(4)(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

- (i) the attorney general;
- (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;
- (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or
- (iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (4)(a) (5)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- (i) the death of the child as a result of child abuse or neglect;
- (ii) a sexual offense, as defined in 46-23-502, against the child;
- (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or
- (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(5)(6) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(6)(7) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(7)(8) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(8)(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (4) (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(9)(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (8) (9) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(10)(11) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(11)(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 2. Section 41-3-208, MCA, is amended to read:

"41-3-208. Rulemaking authority. (1) The department of public health and human services shall adopt rules to govern the procedures used

by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

(3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure of records as provided in 41-3-205~~(4)~~(5). In adopting the rule, the department shall collaborate with the attorney general, the office of the child and family ombudsman, and appropriate county attorneys, law enforcement agencies, and county interdisciplinary child information and school safety teams established pursuant to 52-2-211.”

Approved April 10, 2017

CHAPTER NO. 181

[SB 169]

AN ACT REVISING LAWS RELATING TO CONTRACTUAL RIGHTS OF GRANTORS AND DEALERS; ALLOWING A RIGHT OF FIRST REFUSAL FOR FARM IMPLEMENT MANUFACTURER CONTRACT GRANTORS; ALLOWING A RIGHT OF FIRST REFUSAL FOR CONSTRUCTION EQUIPMENT GRANTORS; PROVIDING CIVIL DAMAGES; AMENDING SECTIONS 30-11-809 AND 30-11-908, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Grantor’s right of first refusal – farm implements. (1) In addition to the terms of a dealership contract, in the event of a proposed sale or transfer of a dealership or of a location at which the dealer conducts any of the dealership’s business, one or more grantors shall have the option to exercise a right of first refusal to acquire the dealer’s assets that are dedicated to the sale and service of the grantor’s farm implements at the relevant location. The right of first refusal may occur if all the following requirements are met:

(a) the grantor notifies the dealer in writing of the grantor’s intent to exercise the right of first refusal within 60 days of receipt of the dealer’s written proposal for sale or transfer;

(b) the dealer’s owner receives the same or greater consideration as they have contracted to receive in a sale, not exceeding fair market value, in connection with the proposed change of ownership or transfer of the dealer’s assets that are dedicated to the sale and service of the grantor’s farm implements at the relevant location;

(c) the proposed sale or transfer of the dealership’s assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, corporation, or other entity controlled by a member or members of the family of one or more dealer owners; and

(d) the grantor and dealer agree to each pay 50% of the total reasonable costs and attorney fees upon completion of the transaction. The costs include amounts incurred by the grantor and dealer that are relative to the proposed changes in ownership or transfer of dealership assets. Each party shall submit an accounting of the party’s costs and attorney fees within 20 days of the receipt of the other party’s written request for the accounting. The grantor may request the accounting before exercising the grantor’s right of first refusal.

(2) If the grantor and the dealer cannot agree on the fair market value in subsection (1)(b), they shall appoint a mutually agreeable certified business

appraiser to establish the fair market value. The cost of the appraiser must be shared equally by the grantor and dealer. If the grantor and the dealer cannot agree on an appraiser, each shall appoint a certified business appraiser who must make an independent appraisal. The grantor and dealer shall each be responsible for the cost of the appraiser it retains. If the appraisals are within 10% of each other, the average of the two appraisals must constitute the fair market value. If the two appraisals differ by more than 10%, the two appraisers may appoint a third certified business appraiser who shall review the first two appraisals. The third appraisal, when taken with the first two appraisals and averaged amongst the three, must establish the fair market value. The cost of the third appraiser must be shared equally by the grantor and dealer.

(3) This section does not impose any obligation on the grantor to purchase the dealership and does not affect any contractual right of a grantor, including but not limited to any right to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of farm implements.

(4) If the grantor exercises its right of first refusal under this section, the grantor and dealer shall use best efforts to complete the transaction within 120 calendar days after the fair market value has been determined under subsection (2). If the grantor elects not to exercise its right of first refusal, the proposed transfer or sale remains subject to further review pursuant to 30-11-804 through 30-11-806. During the 60-day period set forth in subsection (1)(a) of this section, the grantor shall assess whether the proposed new owner or transferee meets the requirements of 30-11-804.

Section 2. Grantor's right of first refusal – construction equipment.

(1) In addition to the terms of a dealership contract, in the event of a proposed sale or transfer of a dealership or of a location at which the dealer conducts any of the dealership's business, one or more grantors shall have the option to exercise a right of first refusal to acquire the dealer's assets that are dedicated to the sale and service of the grantor's construction equipment at the relevant location. The right of first refusal may occur if all the following requirements are met:

(a) the grantor notifies the dealer in writing of the grantor's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer's owner receives the same or greater consideration as they have contracted to receive in a sale, not exceeding fair market value, in connection with the proposed change of ownership or transfer of the dealer's assets that are dedicated to the sale and service of the grantor's construction equipment at the relevant location;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, corporation, or other entity controlled by a member or members of the family of one or more dealer owners; and

(d) the grantor and dealer agree to each pay 50% of the total reasonable costs and attorney fees upon completion of the transaction. The costs include amounts incurred by the grantor and dealer relative to the proposed changes in ownership or transfer of dealership assets. Each party shall submit an accounting of the party's costs and attorney fees within 20 days of receipt of the other party's written request for the accounting. The grantor may request the accounting before exercising the grantor's right of first refusal.

(2) If the grantor and the dealer cannot agree on the fair market value in subsection (1)(b), they shall appoint a mutually agreeable certified business

appraiser to establish the fair market value and the cost of the appraiser must be shared equally by the grantor and dealer. If the grantor and the dealer cannot agree on an appraiser, each shall appoint a certified business appraiser who shall make an independent appraisal. The grantor and dealer shall each be responsible for the appraiser it retains. If the appraisals are within 10% of each other, the average of the two appraisals must constitute the fair market value. If the two appraisals differ by more than 10%, the two appraisers may appoint a third certified business appraiser who shall review the two appraisals. The third appraisal, when taken with the first two appraisals and averaged amongst the three, must establish the fair market value. The cost of the third appraiser must be shared equally by the grantor and dealer.

(3) This section does not impose any obligation on the grantor to purchase the dealership and does not affect any contractual right of a grantor, including but not limited to any right to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of construction equipment.

(4) If the grantor exercises its right of first refusal under this section, the grantor and dealer shall use best efforts to complete the transaction within 120 calendar days after the fair market value has been determined under subsection (2). If the grantor elects not to exercise its right of first refusal, the proposed transfer or sale remains subject to further review pursuant to 30-11-904 through 30-11-906. During the 60-day period set forth in subsection (1)(a) of this section, the grantor shall assess whether the proposed new owner or transferee meets the requirements of 30-11-904.

Section 3. Section 30-11-809, MCA, is amended to read:

"30-11-809. Civil damages. A dealer suffering pecuniary loss due to a violation of 30-11-804 through 30-11-809 or [section 1] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees."

Section 4. Section 30-11-908, MCA, is amended to read:

"30-11-908. Civil damages. A dealer suffering pecuniary loss due to a violation of 30-11-904 through 30-11-908 or [section 2] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees."

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 30, chapter 11, part 8, and the provisions of Title 30, chapter 11, part 8, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 30, chapter 11, part 9, and the provisions of Title 30, chapter 11, part 9, apply to [section 2].

Section 6. Applicability. [This act] applies to all dealer agreements that are executed or renewed on or after [the effective date of this act].

Approved April 10, 2017

CHAPTER NO. 182

[HB 351]

AN ACT REVISING LAWS RELATING TO THE PERMANENCY OF YOUTH IN FOSTER CARE; REVISING PERMANENCY PLAN AND HEARING REQUIREMENTS; AND AMENDING SECTION 41-3-445, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-445, MCA, is amended to read:

“41-3-445. Permanency hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child’s first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child’s parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department’s efforts to effectuate the permanency plan for the child, address the options for the child’s permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) In a permanency hearing, the court or other entity conducting the hearing shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

(5) (a) The court’s order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child’s extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department’s custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality

laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(6) The court shall approve a specific permanency plan for the child and make written findings on:

(a) *whether the child has been asked about the desired permanency outcome;*

~~(a)~~(b) *whether the permanency plan is in the best interests of the child;*

(c) *whether the department has made reasonable efforts to effectuate the permanency plan for the individual child;*

~~(b)~~(d) *whether the department has made reasonable efforts to finalize the plan; and*

(e) *whether there are compelling reasons why it is not in the best interest of the individual child to:*

(i) *return to the child's home; or*

(ii) *be placed for adoption, with a legal guardian, or with a fit and willing relative; and*

~~(e)~~(f) *other necessary steps that the department is required to take to effectuate the terms of the plan.*

(7) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (8) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(8) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) permanent placement of the child with the noncustodial parent, superseding any existing custodial order;

(c) adoption;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(9) *For a child 14 years of age or older, the permanency plan must:*

(a) *be developed in consultation with the child and in consultation with up to two members of the child's case planning team who are chosen by the child and who are not a foster parent or social worker for the child;*

(b) *identify one person from the case management team, who is selected by the child, to be designated as the child's advisor and advocate for the application of the reasonable and prudent parenting standard; and*

(c) *include services that will be needed to transition the child from foster care to adulthood.*

(10) *A permanency hearing must document the intensive, ongoing, and unsuccessful efforts made by the department to return the child to the child's home or to secure a permanent placement of the child with a relative, legal guardian, or adoptive parent.*

(9)(11) *The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."*

Approved April 10, 2017

CHAPTER NO. 183

[SB 40]

AN ACT REVISING THE LAWS RELATING TO THE LEGISLATIVE BROADCASTING SERVICES; AMENDING SECTIONS 5-11-1101, 5-11-1102, AND 5-11-1111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-1101, MCA, is amended to read:

"5-11-1101. Legislative findings and purpose. The legislature finds and declares that:

(1) the purpose of a state-funded public affairs broadcasting program is to provide Montana citizens with increased access to unbiased information about state government deliberations and public policy events through unedited television coverage and other communications technologies; and

(2) ~~the most efficient and effective preferred~~ means of establishing and maintaining a state-funded public affairs broadcasting program is to assign the enabling responsibilities to the legislative council and ~~require~~ the division to contract with a qualified operator through a competitive bidding process. *If a qualified operator is not found, the division may become the operator and operate within the existing appropriation until a qualified operator is hired under a subsequent request for proposals. The division may not be the sole operator on a permanent basis but shall seek to maintain a partnership with an*

outside operator. The division shall issue a request for proposals before the end of any biennium during which the division serves as a temporary operator. Any scoring and review team for the requested proposals must include a member of the majority party and a member of the minority party who are members of the legislative council.

Section 2. Section 5-11-1102, MCA, is amended to read:

“5-11-1102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Broadcasting” means any application of communication technologies to deliver live or delayed programming to a viewing audience, including but not limited to over-the-air television broadcasts, cable television, and the streaming of audio or video signals over the internet.

(2) “Division” means the legislative services division provided for in 5-11-111.

(3) “Gavel-to-gavel coverage” means that any broadcast of legislative or administrative proceedings is activated when the presiding officer of a floor session or a committee meeting calls the body to order and is deactivated on adjournment.

(4) “Operator” means:

(a) a private, nonprofit organization exempt from taxation under section 501(c) of the Internal Revenue Code; or

(b) *a public or private Montana institution of higher education that has a program related to video production or broadcast or a related field.”*

Section 3. Section 5-11-1111, MCA, is amended to read:

“5-11-1111. State government broadcasting -- structure and governance. (1) There is a state government broadcasting service administered by the division. The division shall:

(a) develop and issue a request for proposals for the production of gavel-to-gavel coverage of legislative and administrative proceedings as well as other public affairs programming that is approved by the legislative council;

(b) evaluate proposals and, on the basis of selection criteria established by the division *and if an acceptable proposal is received*, execute a contract for services with the most qualified operator; and

(c) ~~cooperate~~ *coordinate* with executive branch and judicial branch officials to facilitate broadcast coverage of state government activities and events that are pertinent to the purpose set forth in 5-11-1101.

(2) The legislative council shall assist the division in exercising oversight of the contract with the operator to ensure that broadcasts conform with the following principles of good conduct:

(a) Programming must be fair, accurate, and balanced without regard to partisanship or ideology.

(b) Programming must be scheduled in a manner that acknowledges the importance of timeliness in the delivery of information.

(c) Issue coverage and the scheduling of broadcasts must reflect a thoughtful balance of subject areas, geographic sensitivities, and attention to the various committees and other deliberative bodies engaged in the legislative process.

(d) Programming must always be intended to increase public understanding of both the substantive issues and the processes by which the legislature and other bodies seek to resolve problems, address challenges, and seize opportunities for the public good.

(e) Programming must include each branch of government to the extent possible.

(f) Production values must be of the highest attainable quality to accurately convey the genuine pace and tenor of governmental activity.

(g) Camera angles, shot selection, graphic subtitling, and other aspects of broadcast style and audiovisual content are subject to guidance and monitoring by the division to ensure impartiality and respect for the decorum of the legislature and other governmental institutions.

(3) The division is responsible for ensuring that the audio and video components of the broadcasting service are maintained in good working order.

(4) Operations and maintenance of the cameras, cabling, wiring, electronics, recording equipment, and associated information technology in the capitol and the broadcast production facility are the responsibility of the ~~operator or contractor that the division selects, as provided in subsection (1)(b), under the direction of the division.~~ The operator, ~~the contractor~~ *other contractors*, if any, the division, and the department of administration shall cooperate with each other to ensure broadcast system reliability.

(5) The division shall develop and implement a plan to provide the maximum attainable transmission or distribution of broadcasts. The division may enter into agreements with one or more Montana public television organizations, telecommunications firms, nonprofit organizations, or state telecommunications networks for transmission or distribution of broadcasts.”

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2017

CHAPTER NO. 184

[SB 224]

AN ACT EXEMPTING REPLACEMENT WATER AND SEWER SYSTEMS FROM SUBDIVISION REVIEW FOR THE SALE OF A STATE-OWNED CABIN OR HOME SITE; AMENDING SECTION 77-2-318, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-318, MCA, is amended to read:

“77-2-318. Sale of leased cabin or home sites. (1) (a) The board shall, consistent with the board’s constitutional fiduciary duty of attaining full market value, make available for sale within a reasonable period of time as provided in this part those lands that were state land cabin or home sites on May 6, 2013, at the request of a lessee or an improvement owner and with the consent of any mortgagee or other owner of an interest in the cabin or home site improvements, only if the requested sale is consistent with the board’s constitutional fiduciary duty of attaining full market value and with the provisions of this part and if the sale is approved by the board.

(b) (i) The disposition of proceeds of any sale of state land property pursuant to this section must comply with the provisions of 77-2-337.

(ii) The proceeds of any sale of cabin site improvements pursuant to this part must go to the owner of record of the improvements.

(2) The sale of a cabin or home site is exempt from the subdivision laws, except that the development of any new, ~~replacement~~, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(3) The board may adopt rules to ensure that the sales process authorized pursuant to this section is orderly and consistent with its constitutional fiduciary duties and that the number of leased cabin or home sites made

available for sale at any given time is consistent with the board's constitutional duty of attaining full market value.

(4) Upon a sale of a cabin or home site, the board may:

(a) grant a permanent easement across state lands to secure access using current routes; or

(b) convey an appurtenant, nonexclusive easement to the property from the nearest public road if:

(i) the board has authority to grant the easement; and

(ii) the conveyance of the easement does not overburden a right-of-way held by the board.

(5) The appraised value and minimum bid for a cabin or home site must include the value of the easement granted pursuant to subsection (4).

(6) For purposes of this section, "cabin site improvements" has the meaning provided in 77-2-317."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to the sale of cabin or home sites initiated on or after [the effective date of this act].

Approved April 11, 2017

CHAPTER NO. 185

[SB 252]

AN ACT PROVIDING A WAIVER FROM FILING OF A COMPOSITE RETURN OR WITHHOLDING OF TAX FOR CERTAIN DOMESTIC SECOND-TIER PASS-THROUGH ENTITIES; REVISING DEFINITIONS; AMENDING SECTION 15-30-3313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-3313, MCA, is amended to read:

"15-30-3313. Consent or withholding -- rulemaking. (1) A pass-through entity that is required to file an information return as provided in 15-30-3302 and that reports a distributive share of income of \$1,000 or more of Montana source income during the tax year to a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, or any other entity, organization, or account whose principal place of business or administration is outside the state of Montana or that is itself a pass-through entity shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-2602;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes, corporate income taxes, and alternative corporate income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return; or

(ii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-2104. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the taxpayer's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the alternative corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(ii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

(5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(ii) from the partner, shareholder, member, or other owner on whose behalf the payment was made.

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely

pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) (a) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information return reporting the name, address, and taxpayer identification number for each person or entity that has an interest in the partnership that results in Montana source income or that has sold its interest in the partnership during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its obligation to pay Montana income taxes.

(b) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) if one or more publicly traded partnerships has a direct or indirect majority interest in the income distributed by the pass-through entity. The pass-through entity shall apply to the department in writing for the waiver of the withholding requirements set forth in subsection (1)(c).

(c) Waivers issued by the department prior to January 1, 2016, to pass-through entities in which a publicly traded partnership has a direct or indirect majority interest will remain in effect in accordance with the law and rules in effect at the time the waiver was granted.

(d) The department shall adopt rules outlining the requirements for the waiver request.

(8) (a) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) for any partner, shareholder, member, or other owner that is a domestic second-tier pass-through entity if:

(i) the pass-through entity files a statement setting forth the name, address, and social security or federal identification number of each of the domestic second-tier pass-through entity's partners, shareholders, members, or other owners; and

(ii) the information establishes that the domestic second-tier pass-through entity's share of Montana source income should be fully accounted for in a ~~resident individual~~ *an income tax return required under Title 15, chapter 30 or 31.*

(b) For purposes of this subsection (8), ~~a~~ *the following definitions apply:*

(i) *"Domestic C. corporation" is a corporation that is engaged in or doing business in the state, as provided in 15-31-101.*

(ii) ~~domestic~~ *"Domestic second-tier pass-through entity" is a pass-through entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals, domestic C. corporations, or any other entities, organizations, or accounts whose principal place of business or administration is located in the state of Montana or any combination of interests held by resident individuals, domestic C. corporations, or any other entities, organizations, or accounts whose principal place of business or administration is located in the state of Montana.*

(c) Subsequent to the initial approval of a waiver, the department may revoke the waiver if it determines that the partner, shareholder, member, or other owner no longer qualifies.

(9) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for

and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state.

(10) The department may adopt rules to administer and enforce the provisions of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016.

Approved April 11, 2017

CHAPTER NO. 186

[HB 128]

AN ACT REVISING WAITING REQUIREMENTS FOR CERTAIN MOUNTAIN SHEEP LICENSES; REQUIRING REPORTING; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-702, MCA, is amended to read:

"87-2-702. Restrictions on special licenses – availability of bear and mountain lion licenses. (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) Except as provided in 87-2-815, a person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2) and 87-2-815, a person who receives a moose, mountain goat, or limited mountain sheep license, as authorized by 87-2-701, with the exception of an antlerless moose or an adult ewe game management license issued under 87-2-104, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) (i) Except as provided in 87-1-271(2) and 87-2-815, a person who takes a *legal ram mountain sheep with at least one horn that is equal to or greater than a three-fourths curl* using an unlimited mountain sheep license or a *population management license*, ~~with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by issued pursuant to 87-2-701,~~ is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection ~~(4)(b)~~ (4)(b)(i), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.

(ii) *Before September 1 of each even-numbered year, the department shall report to the environmental quality council information on:*

(A) *mountain sheep harvested pursuant to this subsection (4) from the Tendoy Mountain herd;*

(B) *efforts to collect tissue samples and other biological information from mountain sheep harvested from the Tendoy Mountain herd to determine the immunity of surviving herd members to pneumonia outbreaks; and*

(C) *attempts by the department to share tissue samples and other biological information collected from the Tendoy Mountain herd with Washington State University, other public entities, and private entities that research the interaction between mountain sheep and domestic sheep.*

(5) An application for a wild buffalo or bison license must be made on the same form and is subject to the same license application deadline as the special license for moose, mountain goat, and mountain sheep.

(6) (a) Licenses for spring bear hunts must be available for purchase at department offices after April 15 of any license year. However, a person who purchases a license for a spring bear hunt after April 15 of any license year may not use the license until 24 hours after the license is issued.

(b) Licenses for fall bear hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a fall bear hunt after August 31 of any license year may not use the license until 24 hours after the license is issued.

(7) Licenses for mountain lion hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a mountain lion hunt after August 31 of any license year may not use the license until 5 days after the license is issued.”

Section 2. Effective date. [This act] is effective July 1, 2017.

Section 3. Termination. [Section 1(4)(b)(ii)] terminates July 1, 2027.

Approved April 11, 2017

CHAPTER NO. 187

[HB 240]

AN ACT CLARIFYING ALLOWED USES OF A SNOWMOBILE TRAIL PASS; ALLOWING A TRAIL PASS AFFIXED BY A DEALER TO BE USED BY THE PURCHASER; REQUIRING DEMO SNOWMOBILES TO HAVE A TRAIL PASS; REQUIRING ALL-TERRAIN VEHICLES TO BE TRACKED TO BE ELIGIBLE FOR A TRAIL PASS; PROVIDING DEFINITIONS; AND AMENDING SECTION 23-2-636, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-636, MCA, is amended to read:

“23-2-636. Snowmobile trail pass – fees – penalties. (1) Except as provided in subsection (4), to be eligible to operate a snowmobile or use motorized equipment or mechanical transport in snowmobile areas groomed with a grant or funding assistance awarded by the department, a person shall first purchase a snowmobile trail pass for \$18.

(2) The trail pass is valid for 3 years from the date of purchase and must be affixed in a conspicuous place to each snowmobile, motorized equipment, or mechanical transport used. A trail pass *expires on June 30 of the third year and* is not transferable between a snowmobile, motorized equipment, or mechanical transport. *If a snowmobile is sold by a dealer with an affixed trail pass, the trail pass may continue to be used by the purchaser of the snowmobile until it expires.*

(3) Application for the issuance of the trail pass must be made at locations and ~~upon~~ *on* forms prescribed by the department.

(4) A person renting a snowmobile registered pursuant to 61-3-321(11)(b) is not required to purchase a snowmobile trail pass but shall carry proof of rental if operating a snowmobile in a snowmobile area that otherwise requires a trail pass pursuant to subsection (1).

(5) Money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department and used as follows:

(a) \$2 must be remitted to the vendor who sold the trail pass if the vendor is not the department;

(b) \$1 must be used for the enforcement of snowmobile laws pursuant to this part; and

(c) the remainder must be used by the department to award grants or funding assistance to snowmobile area operators for the grooming of snowmobile areas.

(6) The failure to affix the trail pass as required by this section or the making of false statements in obtaining the trail pass is a misdemeanor, punishable by a fine of not less than \$25 or more than \$100.

(7) *To be eligible for a snowmobile trail pass pursuant to this section, an all-terrain vehicle must have a wheel base of less than 50 inches in width and be equipped with tracks instead of wheels while operating on a groomed snowmobile trail administered by the department.*

(8) *For the purposes of this section:*

(a) *“motorized equipment” means any motorized equipment allowed by a snowmobile area operator; and*

(b) *“snowmobile” includes snowmobiles used for demonstration purposes by snowmobile dealers.”*

Approved April 11, 2017

CHAPTER NO. 188

[HB 311]

AN ACT AUTHORIZING VETERANS' PREFERENCE FOR RESERVING CERTAIN BLOCK MANAGEMENT AREAS ON VETERANS' DAY; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Veterans' preference for reserving certain block management areas on Veterans' Day. (1) Subject to the provisions of subsections (2) and (3), on Veterans' Day, veterans may be given preference to use block management areas that require a reservation.

(2) A reservation by a veteran to use a block management area pursuant to subsection (1) must be made at least 1 week in advance of Veterans' Day and in accordance with the existing reservation system for that area.

(3) A person who makes a reservation pursuant to this section shall carry proof of the person's veteran status, such as a DD form 214, U.S. department of veterans affairs identification card, or a driver's license indicating the person's veteran status, while hunting on the block management area for which the reservation was made. The person also shall make proof of the person's veteran status available for review by an employee or authorized officer of the department upon request.

(4) The department shall conduct random verification of the veteran status of persons making reservations pursuant to this section.

(5) The department may adopt rules to implement the provisions of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved April 11, 2017

CHAPTER NO. 189

[HB 521]

AN ACT REVISING LAWS REGARDING REPRESENTATION OF LIMITED LIABILITY COMPANIES; AUTHORIZING A MAJORITY MEMBER OF A LIMITED LIABILITY COMPANY TO REPRESENT THE LIMITED LIABILITY COMPANY IN JUSTICE'S COURT AND SMALL CLAIMS COURT; AMENDING SECTIONS 25-31-601, 25-35-505, AND 35-8-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-31-601, MCA, is amended to read:

"25-31-601. Who may act as attorney. (1) Parties in justice's court may appear and act in person or by attorney; ~~and any.~~

(2) Any person, except the constable by whom the summons or jury process was served, may act as attorney for a party.

(3) *Except as provided in 35-8-301, a member with a majority interest in a limited liability company as defined in 35-8-102 may act as attorney for the limited liability company."*

Section 2. Section 25-35-505, MCA, is amended to read:

"25-35-505. Parties – representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency of the state.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) (a) Individuals may represent themselves in a small claims court.

(b) A partnership may be represented by a partner or one of its employees.

(c) A union may be represented by a union member or union employee.

(d) A corporation may be represented by one of its directors, officers, or employees.

(e) *Except as provided in 35-8-301, a limited liability company as defined in 35-8-102 may be represented by a member with a majority interest in the limited liability company.*

(f) An association may be represented by one of its members or by an employee of the association.

(g) Any other kind of organization or entity may be represented by one of its members or employees.

(4) Except as provided in subsection (5), only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) A party may not file an assigned claim in the small claims court unless it has been assigned pursuant to 27-1-718.

(6) Except for claims under 27-1-718, a party may not file more than 10 claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

Section 3. Section 35-8-301, MCA, is amended to read:

“35-8-301. Agency power of members and managers. (1) Except as provided in subsection (2), a member is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) a manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) *Unless the articles of organization state otherwise, a member with a majority interest in the limited liability company may represent the limited liability company in justice’s court as provided in 25-31-601 and small claims court pursuant to 25-35-505.”*

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2017

CHAPTER NO. 190

[SB 135]

AN ACT ENCOURAGING SCHOOL DISTRICTS TO PROVIDE A PROGRAM OF STUDY IN FIRST AID, CARDIOPULMONARY RESUSCITATION, AND THE USE OF AUTOMATED EXTERNAL DEFIBRILLATORS; REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO PROVIDE GUIDANCE AND SUPPORT TO SCHOOL DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that protecting citizens from serious injury and death is a compelling state interest; and

WHEREAS, sudden cardiac arrest is a leading cause of death in the United States with only a 7-9% survival rate; and

WHEREAS, bystander CPR can greatly increase survival rates of sudden cardiac arrest; and

WHEREAS, training all high school graduates in CPR will add thousands of trained rescuers to the population each year; and

WHEREAS, this training requires minimal time and cost; and

WHEREAS, numerous individuals and organizations are willing to support schools in providing this training.

Be it enacted by the Legislature of the State of Montana:

Section 1. First aid training in schools. (1) The office of public instruction shall, in consultation with school districts, the department of public health and human services, the American heart association, and the American red cross, provide guidance and technical support and make available a program of study to Montana schools on:

- (a) basic first aid;
- (b) basic cardiopulmonary resuscitation; and
- (c) the use of automated external defibrillators.

(2) The guidance and program of study under subsection (1) must comply with current evidence-based guidance from the American heart association or another national science organization. The office of public instruction shall annually notify high school and K-12 school districts during the month of August in writing or electronically of the availability and any updating of the guidance and program of study under subsection (1).

(3) School districts are encouraged to incorporate the program of study under subsection (1) during health enhancement courses during high school as required in the accreditation standards and to include in the program of study hands-on practicing of cardiopulmonary resuscitation.

(4) A school district and the office of public instruction may accept from any person, public entity, or other legal entity in-kind donations of materials, equipment, or services that may be used in the program of study under subsection (1).

(5) The office of public instruction, in consultation with the department of public health and human services, shall assist districts in carrying out a program under this section, including providing guidelines and advice for seeking grants for the purchase of automated external defibrillators or seeking donations of automated external defibrillators. The office of public instruction may coordinate with local health districts or other organizations in seeking grants and donations for this purpose.

(6) A school district may use any of the following persons to provide instruction and training pursuant to this section:

- (a) emergency medical technicians;
- (b) paramedics;
- (c) fire department personnel;
- (d) police officers;
- (e) representatives of the American heart association;
- (f) representatives of the American red cross;
- (g) teachers;
- (h) other school employees; and
- (i) other similarly qualified persons.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 13, and the provisions of Title 20, chapter 7, part 13, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2017

CHAPTER NO. 191

[SB 180]

AN ACT CLARIFYING WHICH AIRLINES ARE REGULARLY SCHEDULED AIRLINES FOR PURPOSES OF CENTRAL ASSESSMENT; AMENDING SECTIONS 15-23-401 AND 15-23-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-401, MCA, is amended to read:

“15-23-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Air commerce” means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights.

(2) “Aircraft” means a conveyance used or designed for navigation or flight through the air.

(3) “Equated plane hours” means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(4) “Flight property” means aircraft fully equipped, ready for flight used in air commerce.

(5) “Newly acquired aircraft” means an aircraft acquired and placed into service within the calendar year immediately preceding the current calendar year in which the report that is required by 15-23-402 is filed regardless of whether the aircraft acquired is new or used. Newly acquired aircraft includes an aircraft acquired and placed in service in calendar year 1997 provided that the aircraft was included in the report and the report was timely filed.

(6) “Newly acquired equipment” means equipment acquired and placed into service within the calendar year immediately preceding the current calendar year in which the report that is required by 15-23-402 is filed regardless of whether the equipment acquired is new or used. Newly acquired equipment includes equipment acquired and placed in service in calendar year 1997 provided that the equipment was included in the report and the report was timely filed.

(7) “Operating” or “operated” means landings or takeoffs during interstate flight.

(8) *“Regularly scheduled flight” means a flight or aircraft taking off or landing in the state of Montana with a maximum takeoff weight of more than 19,000 pounds.*

(8)(9) “Scheduled airline company” means any person who undertakes directly or indirectly to engage in the business of scheduled air commerce.”

Section 2. Section 15-23-403, MCA, is amended to read:

“15-23-403. Determination of value – exception for new aircraft and supporting equipment – notice. (1) The department of revenue shall determine the full and true valuation of all property of each airline operating in this state or used by each scheduled airline company in air commerce. Except as provided in subsection (2), this valuation may be ascertained by:

(a) determining the full and true valuation of all property owned and operated by each scheduled airline company; and

(b) allocating to the state of Montana from the total valuation a valuation that represents this state’s proper share of the valuation of the property, through the application of the ratios that are described in 15-23-402(8), (9), (10), and (11) against the total valuation.

(2) For a scheduled airline company operating within this state whose allocation of valuation within this state, as determined under subsection (1)(b), is 50% or more, the department shall determine the valuation of a newly acquired aircraft and newly acquired equipment to support that aircraft at 28% of full and true valuation for the first year after acquisition. For each succeeding year, the department shall increase the valuation by 8% over the previous year's valuation until the valuation equals full and true valuation.

(3) *Aircraft with a maximum takeoff weight of 19,000 pounds or less is considered nonoperating property and must be removed from the market value of a scheduled airline company.*

~~(3)~~(4) After making the assessment as provided in subsection (1) or (2), the department shall give written notice of the assessment to the person or persons to whom the assessment is made."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2017

CHAPTER NO. 192

[SB 231]

AN ACT ESTABLISHING THE SENATOR CONRAD BURNS MEMORIAL HIGHWAY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE LOCATION ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Senator Conrad Burns was dedicated to the state of Montana and to his community of Billings; and

WHEREAS, a resident of Montana since 1962, Senator Burns was a cattle auctioneer and a farm reporter, eventually founding the successful Northern Ag Network, before beginning a career in public service; and

WHEREAS, Senator Burns served as Yellowstone County Commissioner before his election to the U.S. Senate in 1988, where he represented the state of Montana for three terms; and

WHEREAS, Senator Burns understood the importance of infrastructure development and, through his influential membership on the Senate Appropriations Committee, secured critical funding for numerous road and building projects throughout Montana, including the Zimmerman Trail in Billings and the Helena Armed Forces Reserve Center and the Training Center Headquarters; and

WHEREAS, Senator Burns' support was instrumental in the completion of improvements to Airport Road in Billings; and

WHEREAS, designation of a portion of Airport Road as the Senator Conrad Burns Memorial Highway would honor Senator Burns and recognize his commitment to and hard work on behalf of the community of Billings and the state of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Senator Conrad Burns memorial highway. (1) There is established the Senator Conrad Burns memorial highway on the existing road known as "Airport Road" in Billings from the junction with U.S. highway 87 known as "Main Street" in the Billings heights to the intersection of North 27th street, Montana highway 3.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2017

CHAPTER NO. 193

[SB 275]

AN ACT DEFINING “CONSTRUCTION INDUSTRY” IN THE WORKERS’ COMPENSATION CONSTRUCTION PREMIUM CREDIT PROGRAM; AMENDING SECTION 39-71-2211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2211, MCA, is amended to read:

“39-71-2211. Premium rates for construction industry – filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer’s higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the state’s average weekly wage as reported by the department.

(3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall ~~adopt~~ use the plan filed by the designated advisory organization or ~~adopt~~ use a credit scale plan that meets the requirements of this section.

(5) *For the purposes of this section, “construction industry” means the construction group of code classifications filed with and approved by the commissioner to be used by the advisory organization to comply with this section.*”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to policies issued or renewed on or after July 1, 2017.

Approved April 13, 2017

CHAPTER NO. 194

[HB 45]

AN ACT GENERALLY REVISING MEDICAL EXAMINER LAWS; REVISING LAWS RELATED TO APPOINTMENT AND SUPERVISION OF THE STATE AND ASSOCIATE MEDICAL EXAMINERS; REVISING QUALIFICATIONS

OF ASSOCIATE MEDICAL EXAMINERS; PROVIDING FOR DEPUTY MEDICAL EXAMINERS; REVISING WHEN CERTAIN POSTMORTEM EXAMINATIONS MUST BE PERFORMED BY THE STATE OR DEPUTY MEDICAL EXAMINERS; AND AMENDING SECTIONS 44-3-201, 44-3-203, 46-4-103, 46-4-110, AND 46-4-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-3-201, MCA, is amended to read:

“44-3-201. State medical examiner. A state medical examiner must be appointed by *and serves at the pleasure of* the attorney general. The state medical examiner must be a physician licensed to practice medicine in Montana *and be board-certified in forensic pathology. Once appointed, the state medical examiner is supervised by the director of the laboratory of criminalistics. Medical examiners are to be free from undue personal, professional, or political influences as they objectively pursue and report the facts and opinions of their death investigations.*”

Section 2. Section 44-3-203, MCA, is amended to read:

“44-3-203. Associate medical examiners – qualifications. Associate medical examiners must be ~~physicians~~ *physicians* licensed to practice in Montana *and be board-certified in forensic pathology*, and may continue their private practice during their appointment. *Associate medical examiners are appointed by, supervised by, and serve at the pleasure of the state medical examiner.*”

Section 3. Deputy state medical examiner. Deputy state medical examiners are hired and supervised by the state medical examiner. Deputy state medical examiners must be physicians licensed to practice medicine in Montana and must be board-certified or eligible to be board-certified in forensic pathology. Board certification is required within 5 years of eligibility.

Section 4. Section 46-4-103, MCA, is amended to read:

“46-4-103. Autopsy *Postmortem examination – when conducted, scope.* (1) If in the opinion of the coroner ~~an autopsy~~ *a postmortem examination* is advisable, the coroner shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of ~~autopsies~~ *postmortem examinations* is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for ~~an autopsy~~ *a postmortem examination* that is ordered by the coroner, county attorney, or attorney general. In ordering ~~an autopsy~~ *a postmortem examination*, the coroner, county attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct ~~an autopsy~~ *a postmortem examination* includes the right to retain specimens the medical examiner performing the ~~autopsy~~ *postmortem examination* considers necessary.

(3) The ~~state of Montana~~ *department of justice* shall pay any expenses incurred whenever ~~an autopsy~~ *a postmortem examination* or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever ~~an autopsy~~ *a postmortem examination*, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

(5) ~~Autopsies~~ *Postmortem examinations* performed under this section on a decedent whose death is under investigation and who has made an anatomical

gift or on whose behalf an anatomical gift has been made must be performed in accordance with 72-17-217 and 72-17-218.

(6) (a) *A postmortem examination must be performed by the state medical examiner or a deputy state medical examiner whenever the death occurred:*

(i) *while the decedent was incarcerated in a prison or confined to a correctional or detention facility owned or operated by the state or a political subdivision of the state; or*

(ii) *while the decedent was being pursued, apprehended, or taken into custody by, or while in the custody of, any law enforcement agency or peace officer.*

(b) *If a death under subsection (6)(a) occurred while the decedent was under medical care, a state or deputy state medical examiner must be consulted and the need for further examination determined on a case-by-case basis.*

(7) *The department of justice shall pay any expenses related to postmortem examinations performed under subsection (6)."*

Section 5. Section 46-4-110, MCA, is amended to read:

"46-4-110. Powers of coroner. In the performance of duties under this chapter, the coroner may:

(1) pronounce the fact of death of any human being under circumstances in which the coroner has a duty to inquire pursuant to 46-4-122;

(2) certify and amend death certificates as considered necessary in circumstances under which the coroner has a duty to inquire pursuant to 46-4-122;

(3) issue subpoenas pursuant to 46-4-112;

(4) order ~~autopsies~~ *postmortem examinations* as provided in 46-4-103;

(5) conduct examinations and tests as considered necessary to determine the cause, manner, and circumstances of death and identification of a dead human body as provided in 46-4-101 and 46-4-113;

(6) order a dead human body to be disinterred or removed from its place of disposition, with or without the consent of the next of kin, under circumstances in which the coroner has a duty to inquire pursuant to 46-4-122;

(7) conduct inquests pursuant to 46-4-201; and

(8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry or the collection of information or evidence needed for an inquiry."

Section 6. Section 46-4-122, MCA, is amended to read:

"46-4-122. Human deaths requiring inquiry by coroner. The coroner shall inquire into and determine the cause and manner of death and all circumstances surrounding a human death:

(1) that was caused or is suspected to have been caused:

(a) in any degree by an injury, either recent or remote in origin; or

(b) by the deceased or any other person that was the result of an act or omission, including but not limited to:

(i) a criminal or suspected criminal act;

(ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal death; or

(iii) an accidental death; or

(c) by an agent, disease, or medical condition that poses a threat to public health;

(2) whenever the death occurred:

(a) while the deceased was incarcerated in a prison or ~~jail~~ or confined to a correctional or detention facility owned and operated by the state or a political subdivision of the state;

(b) while the deceased was ~~in the custody of~~, *being pursued, apprehended, or was being taken into the custody by or while in the custody of*, a any law enforcement agency or a peace officer;

(c) during or as a result of the deceased's employment;

(d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead upon arrival at a medical facility; or

(e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician at any time in the 30-day period prior to death;

(3) if the dead human body is to be cremated or shipped into the state and lacks proper medical certification or burial or transmit permits; or

(4) that occurred under suspicious circumstances.”

Section 7. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 44, chapter 3, part 2, and the provisions of Title 44, chapter 3, part 2, apply to [section 3].

Approved April 13, 2017

CHAPTER NO. 195

[HB 101]

AN ACT GENERALLY REVISING LAWS RELATED TO THE ADMINISTRATION OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS; REVISING PROVISIONS OF THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; REVISING PROVISIONS OF THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CREATING WORKING RETIREE HOUR LIMITS AND SECOND RETIREMENT BENEFITS IN ALL SYSTEMS IN WHICH THEY DO NOT CURRENTLY EXIST; CLARIFYING ELIGIBILITY FOR SERVICE PURCHASES; CLARIFYING LUMP-SUM PAYOUTS; PROVIDING FOR THE SUSPENSION OF SUSPECT BENEFIT PAYMENTS; PROVIDING FOR RECOVERY OF OVERPAYMENTS; CLARIFYING WHEN RETIREMENT BENEFITS ARE SUBJECT TO ATTACHMENT; ASSESSING ACTUARIAL COSTS TO TERMINATING EMPLOYERS; REVISING THE AGE LIMIT FOR CERTAIN DISABILITY PAYMENTS; CLARIFYING RETURN TO SERVICE PROVISIONS FOR RETIRED VOLUNTEER FIREFIGHTERS; AMENDING SECTIONS 19-2-602, 19-2-603, 19-2-704, 19-2-902, 19-2-903, 19-2-904, 19-2-907, 19-2-1004, 19-3-108, 19-3-201, 19-3-403, 19-3-413, 19-3-1105, 19-3-1106, 19-3-2141, 19-5-502, 19-6-101, 19-6-1005, 19-7-101, 19-7-1101, 19-8-101, 19-8-1003, 19-9-1204, 19-9-1207, 19-9-1301, 19-13-104, 19-13-212, 19-13-302, 19-13-1101, 19-17-112, 19-17-407, 19-17-412, 19-17-502, AND 19-17-503, MCA; REPEALING SECTIONS 19-8-1104 AND 19-17-506, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-602, MCA, is amended to read:

“19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by

the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of \$200 to \$1,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible unless a written application is filed *within 90 days of terminating service* pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of \$200 or more of accumulated contributions, the board shall make a direct rollover distribution of any eligible rollover distribution allowed under section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. As of January 1, 2008, an eligible retirement plan includes a Roth IRA, provided for under 26 U.S.C. 408A. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account that is not an eligible rollover distribution must be paid directly to the recipient."

Section 2. Section 19-2-603, MCA, is amended to read:

"19-2-603. Reinstatement after withdrawal of contributions. Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a *an active* member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person, *while either an active or inactive vested member*, may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated."

Section 3. Section 19-2-704, MCA, is amended to read:

"19-2-704. Purchasing service credits allowed -- payroll deduction.

(1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions *or to redeposit amounts withdrawn under 19-2-602*.

(3) *A An eligible* member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment by personal check or rollover of funds from another eligible plan, to make installment payments, or to make a combination of a lump-sum payment and installment payments.

(4) Installment payments must be made by personal check paid directly to the board unless the member elects to make payments by irrevocable payroll

deduction. The minimum installment period for payments is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(d) must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction agreement without terminating employment, except when a member becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715.

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the

member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 4. Section 19-2-902, MCA, is amended to read:

"19-2-902. Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except as provided in this part.

(2) (a) If a member or beneficiary *who is a natural person* elects, the board shall pay the ~~present value of the benefit~~ *member's accumulated contributions* to the member or beneficiary in a single lump sum.

(b) The lump sum must be paid at the time the initial monthly benefit would otherwise be payable.

(c) An election to receive a single lump sum must be made at least 30 days prior to the first payment date.

(3) *A beneficiary that is a charitable organization, the estate of the payment recipient, or a trust is eligible only for a single lump sum.*

~~(3)~~(4) If a benefit recipient dies before the last day of the month, a pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate."

Section 5. Section 19-2-903, MCA, is amended to read:

"19-2-903. Correction of errors in and suspension of payments. (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

(a) adjustment of subsequent payments from a member or an employer;

(b) installment payments or a lump-sum payment from an employer; or

(c) a lump-sum payment or a rollover from a member.

(2) If a purchase of service credit made pursuant to 19-2-704 is determined to be incorrect, the board may approve correcting the error by any of the following methods:

(a) adjusting the subsequent lump-sum or installment payments from the member or the member's employer;

(b) accepting a lump-sum payment or rollover from the member for the amount underpaid; or

(c) granting the member service credit proportional to the amount actually paid.

(3) If fraud or error results in a member, survivor, or beneficiary receiving more or less than entitled to, then upon the discovery of the error, the board shall correct the error.

(4) *If the board suspects that a payment is not being delivered to its intended recipient, the board shall suspend the payment. The suspension will continue until the board makes direct contact with the intended recipient and is able to confirm the intended recipient's correct address or direct deposit information. Upon confirmation, payments will resume and any payments suspended must be made to the intended recipient as soon as administratively possible.*

~~(4)~~(5) (a) Except as provided in subsection ~~(5)~~ (6), if a benefit or payment is overpaid or paid to a person not entitled to receive the benefit or payment, the board may recover the full amount of the improper distribution, plus interest set at the assumed rate of return on the system's investments. The interest must be compounded annually and be applied monthly and must

accrue from the date the recipient of the improper distribution received a final determination notice of the improper distribution until the total amount owed to the retirement system pursuant to this subsection ~~(4)~~ (5) is paid in full.

(b) To recover an amount owed pursuant to this subsection ~~(4)~~ (5), the board may adjust future benefit payments or arrange for another method of payment. For collection of amounts due, the board may pursue all remedies available by law to it, including but not limited to initiating a lawsuit, *requesting an electronic funds transfer or automated clearinghouse reversal transaction from the recipient's banking institution*, or assigning or referring the debt to an attorney or collection agency.

(c) The board is entitled to recover its reasonable costs for pursuing collection, including but not limited to attorney fees or charges assessed by a collection agency. These costs may be added to the principal amount due under this subsection ~~(4)~~ (5) and accrue interest as provided in subsection ~~(4)~~(a) (5)(a).

(d) The recipient of an improperly paid benefit or payment is liable for repayment of the total amount owed pursuant to this subsection ~~(4)~~ (5).

(e) The board may, for good cause, waive some or all of the interest charges or collection costs that may be assessed under this subsection ~~(4)~~ (5).

~~(5)~~(6) (a) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system:

(i) the retirement system may recover the amount owed only with respect to the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice of the amount owed and ending when the amount owed is paid in full; and

(ii) interest may not be charged if the amount owed is paid within 30 days after issuance of the final staff determination.

(b) If the amount owed is not paid in full within 30 days after issuance of the final staff determination, the amount owed accrues interest at the retirement system's actuarially assumed annual rate of return, compounded monthly, beginning on the 31st day after issuance of the final staff determination. Interest continues to accrue until the amount owed to the retirement system is fully paid."

Section 6. Section 19-2-904, MCA, is amended to read:

"19-2-904. Withholding of group insurance premium from retirement benefit. (1) A retiree who is a participant in an employee group insurance plan that permits participation in the group plan following retirement may elect to have the monthly premium for group insurance withheld by the retirement system and paid directly by the system to the ~~insurance carrier sponsoring employer~~. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of the former employer. Withholding may not be made for any retiree covered by an individual insurance policy.

(2) Following the death of a retiree who elected withholding of premiums under subsection (1), the retiree's contingent annuitant may elect to have the contingent annuitant's monthly premium for group insurance withheld by the retirement system and paid directly by the system to the ~~insurance carrier sponsoring employer~~. In order to qualify for this withholding, the contingent annuitant must be covered by the same group insurance plan that covered the retiree in accordance with subsection (1)."

Section 7. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees – family law orders – rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) “family law order” means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant’s payment rights in a retirement system to an alternate payee in compliance with this section and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p); and

(b) “participant” means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee’s rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee’s rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) Except as provided in subsection (6)(a), a family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member’s age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(5), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments *unless the family law order specifies that the alternate payee is not entitled to benefit adjustments.*

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant’s vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. The alternate payee’s portion must be totally disbursed to the alternate payee as

soon as administratively feasible upon the board's approval of the family law order.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

Section 8. Section 19-2-1004, MCA, is amended to read:

"19-2-1004. Exemption from taxes and legal process. (1) Except as provided in 19-2-907, ~~and~~ 19-2-909, *and subsection (2) of this section*, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

~~(1)~~(a) subject to execution, garnishment, attachment, or any other process;

~~(2)~~(b) subject to state, county, or municipal taxes except for:

~~(a)~~(i) a benefit or annuity received in excess of the amount determined pursuant to 15-30-2110(2)(c); or

~~(b)~~(ii) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

~~(3)~~(c) assignable except as specifically provided in this chapter.

(2) *The right of a person to any benefit or payment from a retirement system or plan and the money in the system's or plan's pension trust fund associated with that benefit or payment is subject, once the person is entitled to distribution of the benefit or payment, to:*

(a) *a United States tax lien or levy for past-due taxes; and*

(b) *execution, garnishment, attachment, levy, or other process related to the collection of criminal fines and orders of restitution imposed under federal law as provided for in 18 U.S.C. 3613."*

Section 9. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704;

(v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid without termination of employment; or

(vi) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means:

(i) for a member hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for a member hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of service, the total compensation earned divided by the months of membership service.

(b) Lump-sum payments for ~~severance pay, including payment for~~ compensatory leave, sick leave, banked holiday time, and annual leave; paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 10. Section 19-3-201, MCA, is amended to read:

"19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer through a contract entered into between the board and the legislative body of the contracting employer. The contract must provide that all employees eligible under this chapter must become members. Contracts executed prior to July 1, 2009, that limit membership to a specific group or groups of employees remain valid. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of chapter 2 and this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the members of the legislative body within 40 days after the adoption of the resolution.

(b) The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for:

(i) *the cost of the actuarial valuation to determine the terminating agency's liabilities to the retirement system; and*

(ii) *any excess accrued liabilities not previously funded by the terminating agency."*

Section 11. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system and, except as provided in subsection (7), may not later purchase previous service under 19-3-505:

- (1) inmates or residents of state institutions or correctional institutions;
- (2) persons in state institutions principally for the purpose of training but who receive compensation;
- (3) independent contractors;
- (4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent

a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

(6) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(7) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

(8) *county school superintendents who are required by 19-20-302(1)(g) and (2) to be members of the teachers' retirement system provided for in Title 19, chapter 20.*

Section 12. Section 19-3-413, MCA, is amended to read:

“19-3-413. Optional membership – elected officials. (1) (a) Except as provided in 5-2-304, 19-20-302(1)(g) and (2), and subsection (2) of this section, a person who is elected or appointed to an elected office and paid a salary or wage by an employer shall elect either to become an active member of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3).

(b) If the elected official is a retired member, the elected official may make an election under this section to become an active member or to decline membership and remain a retired member with no limitation on the number of hours worked or wages earned in the elected office.

(2) An elected official who works more than 960 hours in a fiscal year in that elected office and who was an active or inactive member before becoming an elected official is not eligible to make an election under subsection (1). An active member remains an active member for all covered employment, and an inactive member shall become an active member.

(3) (a) The board shall prescribe the form of the written application required pursuant to this section and provide the form to each employer.

(b) An election form must be completed and returned to the board within 90 days after the elected official assumes office. Failure to file the written application form within 90 days is considered an election to decline membership.

(c) The employer shall retain a copy of the elected official's written application.

(4) Except as provided in subsection (5), an elected official who declines optional membership may not receive membership service or service credit for any employment in the position for which membership was declined.

(5) An elected official who declined optional membership under this section but who later becomes a member may purchase service credit for the period of time the person was employed in the optional position and declined membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(6) An elected official who has made an election under this section and who is reelected or reappointed to the same office is not eligible to make a new election.

(7) For purposes of this section, "elected official" means all persons covered by subsection (1)(a)."

Section 13. Section 19-3-1105, MCA, is amended to read:

"19-3-1105. Benefit upon second retirement *Refunds and benefits for reemployed retired members.* (1) A member with an initial retirement date before January 1, 2016, who returns to active service and accrues:

(a) less than 2 years of service credit before again terminating service:

(i) must, *upon termination of service and pursuant to 19-2-602*, receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;

(ii) may not be awarded service credit for the period of reemployment; and

(iii) starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service;

(b) at least 2 years of service credit before again terminating service must receive a recalculated retirement benefit based on provisions enacted after the member's initial retirement, *but only with respect to the service credit earned after reemployment.*

(2) A member with an initial retirement date on or after January 1, 2016, who returns to active service and accrues:

(a) less than 5 years of service credit before again terminating service:

(i) must, *upon termination of service and pursuant to 19-2-602*, receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;

(ii) may not be awarded service credit for the period of reemployment; and

(iii) starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service;

(b) at least 5 years of service credit before again terminating service must, starting the first month following termination:

(i) receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(ii) receive a second retirement benefit calculated for the period of reemployment under ~~19-3-902~~ or 19-3-904 or 19-3-906, as applicable, and based on the laws in effect as of the member's rehire date.

(3) Members who return to active service following retirement may not accrue postretirement benefit adjustments under Title 19, chapter 3, part 16, during the member's term of reemployment.

(4) Postretirement benefit adjustments will start to accrue on the benefits under:

(a) subsections (1)(a)(iii) and (2)(a)(iii) in January immediately following the member's second retirement;

(b) subsections (1)(b) and (2)(b) in January after the member has received the recalculated benefit for at least 12 months.

(5) Upon retirement subsequent to a cancellation of a disability benefit under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 or 19-3-906, as applicable. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment."

Section 14. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment -- reduction of service retirement benefit upon exceeding limits -- reporting obligations -- liability -- exceptions.

(1) A retired member under 65 years of age who was hired prior to July 1, 2011, who has been terminated from employment for at least 90 days, and who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retired member who is 65 years of age or older but less than 70 1/2 years of age, who has been terminated from employment for at least 90 days, and who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefit, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) (a) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(b) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (3)(a) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(4) Except as provided in *19-3-412* and *19-3-413*, a retiree returning to employment covered by the retirement system may elect to return to active service at any time during this period of ~~covered~~ employment *covered by the retirement system*.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in

subsections (1) and (2) but are subject to the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who, as a retired member, declines optional membership as provided in 19-3-413.

(6) If a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(7) (a) For the purposes of this section, "employment covered by the retirement system" includes:

(a)(i) work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102; and

(a)(ii) services performed by a retiree as ~~an independent~~ *an independent* contractor for an employer participating in the system.

(b) *For purposes of this section, compensation for a retiree covered by subsection (7)(a) is limited to compensation for the work performed by the retiree and does not include any additional payment for overhead costs or costs not directly related to the work performed.*

Section 15. Section 19-3-2141, MCA, is amended to read:

"19-3-2141. Long-term disability plan – benefit amount – eligibility – administration and rulemaking. (1) For members hired prior to July 1, 2011:

(a) except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513;

(b) an eligible member with at least 25 years of membership service is entitled to a disability benefit equal to 2% of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) For members hired on or after July 1, 2011, the monthly disability benefit payable to a disabled member eligible under the provisions of this section who has:

(a) more than 5 but less than 10 years of membership service is equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) for members hired prior to July 1, 2011:

(i) if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years;

(c) for members hired on or after July 1, 2011:

(i) if the member's disability occurred when the member was less than 65 years of age, the benefit may be paid only until the member reaches ~~65~~ 70 years of age; and

(ii) if the member's disability occurred after the member reached 65 years of age, the benefit may be paid for no more than 5 years; and

(d) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(4) Application for a disability benefit must be made in accordance with 19-2-406.

(5) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(6) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125. Any disability benefits paid in error after the member's death may be recovered by the board pursuant to 19-2-903.

(7) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(8) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section."

Section 16. Section 19-5-502, MCA, is amended to read:

"19-5-502. Service retirement benefit. After termination from service and upon application for service retirement, the service retirement benefit must be as follows:

(1) for members not covered under 19-5-901 *or* 19-5-902, 3 1/3% a year of the member's current salary for the first 15 years of service credit and 1.785% a year for each year of service credit after 15 years; or

(2) for members covered under 19-5-901 *or* 19-5-902, the benefit provided under subsection (1) except that the benefit must be calculated using highest average compensation."

Section 17. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) maintenance, allowances, and expenses; or

(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or
 (b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) (a) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for ~~severance pay, including payment for~~ compensatory leave, sick leave, and annual leave; paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 18. Section 19-6-1005, MCA, is amended to read:

"19-6-1005. (Temporary) Retirement system contributions -- benefit payments to individual DROP accounts -- investment returns.

(1) (a) During a participant's DROP period, state contributions under 19-6-410 and employer contributions under 19-6-404 must continue to be made to the retirement system.

(b) Member contributions under 19-6-402 must be made to the member's DROP account.

(2) Each month during the DROP period, in addition to the contributions credited under subsection (1)(b), a participant's DROP account must be credited with:

~~(a) the monthly benefit that would have been payable to the participant had the participant terminated employment and retired at the commencement of the DROP period, excluding any postretirement benefit adjustments that would have been applied to the benefit under part 7 of this chapter; and~~

~~(b) interest every fiscal yearend at~~

(3) Each fiscal yearend a participant's DROP account must be credited with the interest earned that year based on the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend. (Void on occurrence of contingency--sec. 10, Ch. 258, L. 2015--see part compiler's comment.)"

Section 19. Reemployment of retired members -- contributions required. (1) A retired member who returns to employment covered by the retirement system for 480 hours or more in a calendar year must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to employment covered by the retirement system for less than 480 hours in a calendar year may not become an active member. The retirement benefit of the retired member in covered employment must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year.

(3) Retired members who return to active service pursuant to subsection (1) are subject to the employee and employer contributions set forth in 19-6-402 and 19-6-404.

(4) The employer of a retired member who returns to covered employment pursuant to subsection (2) shall contribute the amounts specified in 19-6-404.

Section 20. Refunds and benefits for reemployed retired members.

(1) A retired member who returns to active service pursuant to [section 19(1)] and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon return to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to [section 19(1)] and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-6-502 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to:

(i) a minimum monthly benefit increase pursuant to 19-6-707 when, immediately following the member's termination of service or retirement, a minimum monthly benefit increase is granted to all eligible covered retirees; or

(ii) a guaranteed annual benefit adjustment in January pursuant to 19-6-710, 19-6-711, or 19-6-712;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment under 19-6-712 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to [section 19(1)]:

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided for in part 7 of this chapter during the member's term of reemployment.

Section 21. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) maintenance, allowances, and expenses; or

(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

(2) "Detention officer" means any detention officer who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set for detention officers by the Montana public safety officer standards and training council established in 2-15-2029.

(3) (a) "Highest average compensation" means:

(i) for members hired prior to July 1, 2011, the member's highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after July 1, 2011, the highest average compensation during any 60 consecutive months of membership service; or

(iii) if a member has not served the minimum specified period of membership service as applicable in subsection (3)(a)(i) or (3)(a)(ii), the total compensation earned divided by the number of months of service.

(b) ~~Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave; paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.~~

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(4) "Investigator" means a person who is employed by the department of justice as a criminal investigator or as a gambling investigator.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 22. Section 19-7-1101, MCA, is amended to read:

"19-7-1101. Reemployment of retired member members – contributions required. (1) A retired member who returns to ~~service covered employment~~ for 480 hours or more in a calendar year must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to ~~service covered employment~~ for less than 480 hours in a calendar year may not become an active member. The retirement benefit of a retired member ~~employed in service covered employment~~ must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year.

(3) Retired members who return to active service pursuant to subsection (1) are subject to the employee and employer contributions set forth in 19-7-403 and 19-7-404.

(4) The employer of a retired member who is returning to ~~work covered employment~~ pursuant to subsection (2) shall contribute the amounts specified in 19-7-404."

Section 23. Refunds and benefits for reemployed retired members.

(1) A retired member who returns to active service pursuant to 19-7-1101(1) and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon returning to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to 19-7-1101(1) and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-7-503 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-7-711 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-7-711 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to 19-7-1101(1):

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided in part 7 of this chapter during the member's term of reemployment.

Section 24. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) maintenance, allowances, and expenses; or

(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

(2) (a) "Highest average compensation" means:

(i) for members hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of membership service, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for ~~severance pay, including payment~~ for compensatory leave, sick leave, annual leave, and banked holiday time; paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation designated or appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the

scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 25. Section 19-8-1003, MCA, is amended to read:

"19-8-1003. Nonduty-related death of active member. If a *vested* member dies before reaching normal retirement age, the member's designated beneficiary may choose either a lump-sum refund of the member's accumulated contributions or the actuarial equivalent of the service retirement benefit provided for in ~~19-8-601~~ *19-8-603*."

Section 26. Reemployment of retired members – contributions required. (1) A retired member who returns to employment covered by the retirement system for 480 hours or more in a calendar year must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to employment covered by the retirement system for less than 480 hours in a calendar year may not become an active member. The retirement benefit of a retired member in covered employment must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year.

(3) Retired members who return to active service pursuant to subsection (1) are subject to the employee and employer contributions set forth in 19-8-502 and 19-8-504.

(4) The employer of a retired member who is returning to covered employment pursuant to subsection (2) shall contribute the amounts specified in 19-8-504.

Section 27. Refunds and benefits for reemployed retired members.

(1) A retired member who returns to active service pursuant to [section 26(1)] and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon return to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to [section 26(1)] and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-8-603 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-8-1105 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-8-1105 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to [section 26(1)] following retirement:

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided in part 11 of this chapter during the member's term of reemployment.

Section 28. Termination of participation in retirement system or reduction of employer contributions. (1) If an employer voluntarily terminates its participation in or contributions to the retirement system or significantly reduces the number of full-paid members it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request an actuarial valuation of the liabilities of the employer to the retirement system.

(2) Based on the actuarial valuation, the board may hold the employer liable for:

(a) the cost of the actuarial valuation to determine the employer's liabilities to the retirement system; and

(b) any excess accrued liabilities not previously funded by the employer.

Section 29. Section 19-9-1204, MCA, is amended to read:

"19-9-1204. Eligibility – participation criteria – membership status – service interruptions. (1) Any member eligible to retire under 19-9-801(1)(a) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or other temporary absence from work and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.

(6) Subject to the provisions of this section, a member who was eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003, and who elects to participate in the DROP on or before October 1, 2003, may include within the member's DROP period any time during the period beginning July 1, 2002, and ending June 30, 2003."

Section 30. Section 19-9-1207, MCA, is amended to read:

"19-9-1207. Employment and benefits after DROP period. ~~(1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.~~

~~(2)(1)~~ When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

~~(3)(2)~~ A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating service, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service credit and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit."

Section 31. Section 19-9-1301, MCA, is amended to read:

“19-9-1301. Reemployment of members. (1) If a retired member with less than 20 years of service in the retirement system who is at least 50 years of age returns to employment covered by the retirement system *before [the effective date of this act]*, on reemployment:

- (a) the member’s retirement benefit *payments* must cease;
- (b) the member becomes a vested active member;
- (c) the member shall repay the retirement system the amount of any retirement benefit received, plus interest at the actuarially assumed rate of return on the system’s investments; and

(d) on subsequent retirement, the member’s retirement benefit must be calculated based on the member’s total service under the system.

(2) If a retired member with 20 or more years of service returns to employment covered by the retirement system *before [the effective date of this act]*, on reemployment:

- (a) the member’s retirement benefit *payments* must cease;
- (b) the member becomes a vested active member;
- (c) on subsequent retirement, the member’s retirement benefit payable prior to the reemployment must resume; and

(d) the member is entitled to an additional new retirement benefit that is calculated based on the member’s new service credit earned and final average compensation after the reemployment.

(3) If a member who is not a retired member returns to employment covered by the retirement system, on reemployment, the member becomes an active member and continues to accrue membership service or service credit as if there had been no break in service.”

Section 32. Reemployment of retired members – contributions required. (1) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system on or after [the effective date of this act] for a period not to exceed 480 hours in any calendar year without returning to active service. The retirement benefit of a retired member in covered employment must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year.

(2) If a retired member returns to employment covered by the retirement system on or after [the effective date of this act] for more than 480 hours in a calendar year, the member returns to active service and the member’s retirement benefit payments must cease until the member again terminates employment and retires.

(3) For each retired member who returns to covered employment pursuant to subsection (1), the employer shall contribute the amount specified in 19-9-703 and the state shall contribute the amount specified in 19-9-702.

(4) The earned compensation of retired members who return to active service pursuant to subsection (2) is subject to the state, employer, and employee contributions set forth in 19-9-702, 19-9-703, and 19-9-710.

Section 33. Refunds and benefits for reemployed retired members.

(1) A retired member who returns to active service pursuant to [section 32(2)] and accrues less than 5 years of service credit before again terminating service:

- (a) may not be awarded service credit for the period of reemployment;
- (b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member’s accumulated contributions associated with the service credit accrued upon returning to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to [section 32(2)] and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-9-801 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to:

(i) a minimum monthly adjustment pursuant to 19-9-1007 when, immediately following the member's termination of service or retirement, whichever is applicable, a minimum monthly adjustment is granted to all eligible covered retirees; or

(ii) a guaranteed annual benefit adjustment pursuant to 19-9-1009, 19-9-1010, or 19-9-1013 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-9-1013 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to [section 32(2)] following retirement:

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided for in part 10 of this chapter during the member's term of reemployment.

Section 34. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave;

(ii) maintenance, allowances, and expenses; or

(iii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means:

(a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211;

(b) a city or a rural fire district referred to in 19-13-210(3);

(c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; and

(d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed pursuant to 7-33-4106 by an employer as a firefighter meeting the standards provided in 7-33-4107.

(7) (a) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member both reaches 50 years of age or older and completes 5 or more years of membership service.

(9) "Newly confirmed firefighter" means a new member of a fire department appointed pursuant to 7-33-4106 and meeting the standards of 7-33-4107.

(10) "Part-paid firefighter" means a person other than a full-paid firefighter employed by a second-class city who receives compensation in excess of \$300 a *in a fiscal* year for service as a firefighter and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

(11) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(12) "Retirement date" means the date on which the first payment of benefits is payable.

(13) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(14) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 35. Section 19-13-212, MCA, is amended to read:

"19-13-212. Termination of participation in retirement system or reduction of employer contributions. (1) If an employer voluntarily terminates its ~~contributions~~ *participation* in *or contributions* to the retirement system or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request as part of the required actuarial valuation an actuarial investigation of the

~~funding status of the employer an actuarial valuation of the liabilities of the employer to the retirement system.~~

(2) ~~Based on the actuarial investigation valuation, the board may request and the employer shall pay annually the amount determined to be necessary to provide adequate funding for the liabilities of the employer. This amount must be in addition to any other contributions required by the retirement act request and the employer shall pay annually the amount determined to be necessary to provide adequate funding for the liabilities of the employer and to cover the cost of the actuarial valuation to determine those liabilities. This amount must be in addition to any other contributions required by the retirement act.~~

(3) ~~Six years after the actuarial investigation is conducted, an employer making payments as provided in subsection (2) may request the board to review the employer's funding status relative to the annual payments. As a result of the review, the board may adjust the payments. Six years after the actuarial investigation is conducted, an employer making payments as provided in subsection (2) may request the board to review the employer's funding status relative to the annual payments. As a result of the review, the board may adjust the payments."~~

Section 36. Section 19-13-302, MCA, is amended to read:

"19-13-302. Ineligibility for other retirement plans. ~~An~~ *Except as provided by 19-2-403(4), an active member is not eligible to be covered under any other mandatory retirement plan to which an employer is required to contribute on the member's behalf while the member is eligible to be covered by this retirement system."*

Section 37. Section 19-13-1101, MCA, is amended to read:

"19-13-1101. Reemployment of retired member members – contributions required. (1) ~~A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit of a retired member in covered employment must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year.~~

(2) ~~If a retired member returns to work in a covered position employment covered by the retirement system for more than 480 hours in a calendar year, the member returns to active service and the member's retirement benefits benefit payments must cease until the member again terminates employment and retires.~~

(3) ~~For each retired member who returns to work pursuant to subsection (1), the employer shall contribute the amount specified in 19-13-605 and the state shall contribute the amount specified in 19-13-604.~~

(4) ~~The earned compensation of retired members who return to active service pursuant to subsection (2) is subject to the employee, state, and employer contributions set forth in 19-13-601, 19-13-604, and 19-13-605."~~

Section 38. Refunds and benefits for reemployed retired members.

(1) ~~A retired member who returns to active service pursuant to 19-13-1101(2) and accrues less than 5 years of service credit before again terminating service:~~

(a) ~~may not be awarded service credit for the period of reemployment;~~

(b) ~~must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon returning to active service; and~~

(c) ~~starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.~~

(2) A retired member who returns to active service pursuant to 19-13-1101(2) and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-13-704 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to:

(i) a minimum benefit adjustment pursuant to 19-13-1007 when, immediately following the member's termination of service or retirement, whichever is applicable, a minimum benefit adjustment is granted to all eligible covered retirees; or

(ii) a guaranteed annual benefit adjustment pursuant to 19-13-1010 or 19-13-1011 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-13-1010 or 19-13-1011 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to 19-13-1101(2) following retirement:

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided for in part 10 of this chapter during the member's term of reemployment.

Section 39. Section 19-17-112, MCA, is amended to read:

"19-17-112. Filing required reports – limitations. (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name, ~~social security number~~, and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify that the fire company and members qualified under 19-17-108 and 19-17-109.

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership form must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original

annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve late filings. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate."

Section 40. Section 19-17-407, MCA, is amended to read:

"19-17-407. Exemption from taxation and legal process. (1) The amount determined pursuant to 15-30-2110(2)(c) of benefits received under this part is exempt from state, county, and municipal taxation.

(2) *Benefits Except as provided in 19-2-907, 19-2-909, and subsection (3) of this section, benefits* received under this part are not subject to execution, garnishment, attachment, or any other process.

(3) *The right of a person to any benefit or payment and the money in the plan's pension trust fund associated with that benefit or payment is subject, once the person is entitled to distribution of the benefit or payment, to:*

(a) *a United States tax lien or levy for past-due taxes; and*

(b) *execution, garnishment, attachment, levy, or other process related to the collection of criminal fines and orders of restitution imposed under federal law as provided for in 18 U.S.C. 3613."*

Section 41. Section 19-17-412, MCA, is amended to read:

"19-17-412. Return to service. (1) A retired member may return to service with a fire company without loss of benefits.

(2) A retired member returning to service under this section is not considered an active member *earning of the fire company and may not earn any additional credit for service.*

(3) The fire chief shall prescribe the duties of any retired member returning to service."

Section 42. Section 19-17-502, MCA, is amended to read:

"19-17-502. Medical expenses. (1) A member who claims medical expenses under this section shall submit a report of injury and medical claim on a form provided by the board in accordance with the board's rules *and a copy of the bill from the medical provider or a receipt for payment of medical expenses.* The claim must be verified by the member and by competent medical authority. The claim must be submitted within 12 months from the date of incurring the injury or illness.

(2) The claim must contain:

(a) the name, social security number, and address of the member;

(b) the date, place, and manner of incurring the injury or illness;

(c) the name and address of the attending physician, surgeon, or nurse, if any;

(d) the dates of hospitalization, if hospitalized;

(e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;

(f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses; and

(g) an affidavit from the chief or designated official of the fire company stating that the member was, at the time of the injury or illness, a member of the fire company and that the injury or illness was incurred in the line of duty as described in 19-17-105.

(3) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty as described in 19-17-105 and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must

equal the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness.

(4) A total claim filed pursuant to subsection (1) may not exceed \$25,000.

(5) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of \$1,500 to help defray the cost of a prosthesis, whichever is less.

(6) The prosthesis may be replaced when necessary, but not more often than every 60 months. The board shall authorize payment of not more than \$1,500 of the replacement costs."

Section 43. Section 19-17-503, MCA, is amended to read:

"19-17-503. Funeral expenses. (1) A person claiming the funeral expenses under this section shall submit a claim form, the death certificate, and *either* a copy of the bill from the funeral director *or a receipt for payment of the funeral expenses*. The claim must be submitted on a form provided by the board, in accordance with the board's rules, and must be verified by the claimant. The claim must be filed with the board within 12 months from the member's date of death.

(2) The claim must contain:

(a) the name, social security number, and address of the member; and

(b) an affidavit from the chief or designated official of the fire company stating that the member was, at the time of death, a member of the fire company and that the death occurred in the line of duty as described in 19-17-105.

(3) ~~The board shall authorize~~ *When a claim under this section is received and approved by the board, payment of reasonable expenses or \$1,500, whichever is less, to help defray the funeral expense of the member whose death occurred in the line of duty, as described in 19-17-105, must be made directly to the appropriate provider of the funeral services or, if a receipt is provided for the full payment of funeral expenses, to the claimant."*

Section 44. Repealer. The following sections of the Montana Code Annotated are repealed:

19-8-1104. Minimum monthly benefit.

19-17-506. Payment of medical and funeral expenses.

Section 45. Codification instruction. (1) [Sections 19 and 20] are intended to be codified as an integral part of Title 19, chapter 6, and the provisions of Title 19, chapter 6, apply to [sections 19 and 20].

(2) [Section 23] is intended to be codified as an integral part of Title 19, chapter 7, part 11, and the provisions of Title 19, chapter 7, part 11, apply to [section 23].

(3) [Sections 26 and 27] are intended to be codified as an integral part of Title 19, chapter 8, and the provisions of Title 19, chapter 8, apply to [sections 26 and 27].

(4) [Section 28] is intended to be codified as an integral part of Title 19, chapter 9, part 1, and the provisions of Title 19, chapter 9, part 1, apply to [section 28].

(5) [Sections 32 and 33] are intended to be codified as an integral part of Title 19, chapter 9, part 13, and the provisions of Title 19, chapter 9, part 13, apply to [sections 32 and 33].

(6) [Section 38] is intended to be codified as an integral part of Title 19, chapter 13, part 11, and the provisions of Title 19, chapter 13, part 11, apply to [section 38].

Section 46. Effective date. [This act] is effective July 1, 2017.

Approved April 13, 2017

CHAPTER NO. 196

[HB 108]

AN ACT REAUTHORIZING THE ALLOCATION OF FREE WILD BUFFALO LICENSES TO TRIBES FOR TRADITIONAL PURPOSES; PROVIDING TERMS OF USE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Allocation of wild buffalo licenses to tribes for traditional purposes. (1) If the commission authorizes the issuance of 40 or more special wild buffalo licenses in any license year, the department shall also issue special licenses to two members of each tribe designated in subsection (3) to hunt wild buffalo during the regular season for wild buffalo in accordance with this section and department rules and regulations. The licenses must be issued free of charge.

(2) Wild buffalo taken with special licenses issued pursuant to this section must be harvested by tribal members for traditional purposes in accordance with the traditional ceremonies of each tribe. All parts of wild buffalo taken pursuant to this section may be possessed and used by each designated tribe in the manner that the tribe sees fit. The tribes must be informed of and abide by any rules adopted pursuant to 87-2-730(3)(c) through (3)(i), except that fair chase hunting by tribal members may include hunting conducted on horseback.

(3) Each of the following tribal governments in Montana may designate two tribal members to receive department-issued special licenses for use in accordance with this section:

- (a) Assiniboine and Sioux tribes of the Fort Peck reservation;
- (b) Blackfeet tribe;
- (c) Chippewa Cree Indians of the Rocky Boy's reservation;
- (d) Confederated Salish and Kootenai tribes;
- (e) Fort Belknap Indian community of the Fort Belknap reservation;
- (f) Northern Cheyenne tribe; and
- (g) Little Shell Chippewa tribe.

(4) As used in this section, "traditional purposes" means the harvesting of buffalo by Plains Indians through utilitarian and spiritual practices handed down from generation to generation to obtain food, shelter, and clothing and to conduct ceremonies and celebrations.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, chapter 2, part 7, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2017

CHAPTER NO. 197

[HB 168]

AN ACT PROVIDING FOR THE EXPUNGEMENT OF CRIMINAL RECORDS FOR MISDEMEANOR OFFENSES IN CERTAIN CASES; PROVIDING DEFINITIONS; AND PROVIDING RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Expungement of misdemeanor records – petition to district court – criteria for expungement – definitions. (1) (a) A person convicted of a misdemeanor offense or offenses who has completed the terms of the sentence for the misdemeanor offense or offenses may petition the district court for an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case.

(b) The district court must determine whether a victim is entitled to notification of the request for expungement as provided in Article II, section 36, subsection(1)(q), of the Montana constitution. If a victim is identified by the district court, the prosecution office responsible for the conviction for which expungement is being requested must attempt to notify the victim. If the victim appears, the victim must be given an opportunity to respond.

(2) Unless the interests of public safety demand otherwise, the district court shall order the records expunged if:

(a) (i) the person has not been convicted of any other offense in this state, another state, or federal court for a period of 5 years since the person completed the terms of the original sentence for the offense, including payment of any financial obligations or successful completion of court-ordered treatment; or

(ii) the person has applied to a United States military academy, has applied to enlist in the armed forces or national guard, or is currently serving in the armed forces or national guard and is prohibited from enlisting or holding a certain position due to a prior conviction; and

(b) the person is not currently being detained for the commission of a new offense and has not been charged with the commission of a new offense, or does not have charges pending for the commission of a new offense, as verified by the prosecution office responsible for the conviction for which expungement is being requested.

(3) Expungement may not be presumed if the person seeking expungement has one or more convictions for assault under 45-5-201, partner or family member assault under 45-5-206, stalking under 45-5-220, a violation of a protective order under 45-5-626, or driving under the influence of alcohol or drugs under Title 61, chapter 8, part 4. The prosecution office that prosecuted the offense for which expungement is being requested must be notified of the request and be given an opportunity to respond and argue against the expungement. In making the determination of whether expungement should be granted, the district court must consider, in addition to any other factors, the age of the petitioner at the time the offense was committed, the length of time between the offense and the request, the rehabilitation of the petitioner, and the likelihood that the person will reoffend.

(4) If the order of expungement is granted, a copy of the order must be sent by the person whose records are to be expunged to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense, the clerk of the court in which the person was sentenced, and the department of justice, along with a form prepared by the department of justice that contains identifying information about the petitioner.

(5) For purposes of handling expunged records, the department of justice may adopt rules to implement the provisions of this section.

(6) A person's records may be expunged pursuant to this section no more than one time during the person's life. A person submitting a petition for expungement under this section must be fingerprinted for purposes of validating the person's identity.

(7) The department of justice shall expunge any records under this section within existing department resources.

(8) For purposes of this section, the following definitions apply:

(a) "Expunge" or "expungement" means to permanently destroy, delete, or erase a record of an offense from the criminal history record information system maintained by the department of justice in a manner that is appropriate for the record's physical or electronic form.

(b) (i) "Record" means any identifiable description, notation, or photograph of an arrest and detention; complaint, indictment, or information and disposition arising from a complaint, indictment, or information; sentence; correctional status; release; and court document or filing.

(ii) The term does not include a fingerprint record or data that may be maintained for investigative purposes.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 1].

Approved April 13, 2017

CHAPTER NO. 198

[HB 444]

AN ACT AUTHORIZING THE USE OF STATE SPECIAL REVENUE FUNDS APPROPRIATED FOR THE JEFFERSON SLOUGH BYPASS CHANNEL TO ALSO BE USED FOR EURASIAN WATERMILFOIL MITIGATION ON THE JEFFERSON SLOUGH; AMENDING SECTION 11, CHAPTER 400, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11, Chapter 400, Laws of 2015, Section C, Department of Natural Resources and Conservation, Conservation and Resource Development Division, item g, is amended to read:

"g. Jefferson Slough Bypass Channel *and Eurasian Watermilfoil Mitigation (Restricted/Biennial/OTO)*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2017

CHAPTER NO. 199

[SB 60]

AN ACT GENERALLY REVISING CRIMINAL JUSTICE LAWS; REVISING PRESENTENCE INVESTIGATION LAWS; REQUIRING A PRELIMINARY OR FINAL REPORT TO BE PROVIDED TO THE COURT WITHIN 30 DAYS; REQUIRING A PROBATION AND PAROLE OFFICER TO USE A VALIDATED RISK AND NEEDS ASSESSMENT AS PART OF THE INVESTIGATION AND REPORT; ALLOWING THE DEPARTMENT OF CORRECTIONS TO USE

EMPLOYEES WITH SPECIFIC TRAINING TO PREPARE PRESENTENCE REPORTS; REQUIRING THE DEPARTMENT TO PROVIDE INITIAL AND ONGOING TRAINING TO PROBATION AND PAROLE OFFICERS; REQUIRING THE DEPARTMENT TO USE AND REGULARLY VALIDATE ITS RISK ASSESSMENT TOOL; AND AMENDING SECTIONS 46-18-111, 46-18-112, 46-23-1004, AND 53-1-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-111, MCA, is amended to read:

“46-18-111. Presentence investigation – when required – definition.

(1) (a) (i) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation and parole officer to make a presentence investigation and report *unless an investigation and report has been provided to the court prior to the plea or the verdict or finding of guilty.*

(ii) *Unless additional information is required under subsections (1)(b), (1)(c), or (1)(d) or unless more time is required to allow for victim input, a preliminary or final presentence investigation and report must be available to the court within 30 days of the plea or the verdict or finding of guilty.*

(iii) The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant’s needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sexual offender evaluator who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney’s office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant’s needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney’s office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the

responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(d) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

(4) *For the purposes of 46-18-112 and this section, “probation and parole officer” means:*

(a) *a probation and parole officer who is employed by the department of corrections pursuant to 46-23-1002; or*

(b) *an employee of the department of corrections who has received specific training or who possesses specific expertise to make a presentence investigation and report but who is not required to be licensed as a probation and parole officer by the public safety officer standards and training council created in 2-15-2029.”*

Section 2. Section 46-18-112, MCA, is amended to read:

“46-18-112. Content of presentence investigation report. (1) Whenever an investigation is required, the probation *and parole* officer shall promptly inquire into and report upon:

(a) the defendant’s characteristics, circumstances, needs, and potentialities, *as reflected in a validated risk and needs assessment;*

(b) the defendant’s criminal record and social history;

(c) the circumstances of the offense;

(d) the time of the defendant’s detention for the offenses charged;

(e) the harm caused, as a result of the offense, to the victim, the victim’s immediate family, and the community; and

(f) the victim’s pecuniary loss, if any. The officer shall make a reasonable effort to confer with the victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or declines to confer, the officer shall record that information in the report.

(2) All local and state mental and correctional institutions, courts, and law enforcement agencies shall furnish, upon request of the officer preparing a presentence investigation, the defendant’s criminal record and other relevant information.

(3) The court may, in its discretion, require that the presentence investigation report include a physical and mental examination of the defendant.

(4) Upon sentencing, the court shall forward to the sheriff all information contained in the presentence investigation report concerning the physical and

mental health of the defendant, and the information must be delivered with the defendant as required in 46-19-101.”

Section 3. Section 46-23-1004, MCA, is amended to read:

“46-23-1004. Duties of department. The department is responsible for any investigation and supervision requested by the board or the courts for felony offenders. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff, *including initial training on risk assessment and evidence-based practices for new probation and parole officers and regular training for all probation and parole officers. Performance reviews of probation and parole officers must incorporate the requirements for training on risk assessment and other evidence-based practices.*

(7) cooperate with all agencies, public and private, that are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the Interstate Compact for Adult Offender Supervision; and

(9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted of an offense involving theft from an employer.”

Section 4. Section 53-1-203, MCA, is amended to read:

“53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) to carry out the purposes of 41-5-125;

(ii) for the siting, establishment, and expansion of prerelease centers;

(iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

(v) for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This

subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(j) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on juvenile parole supervision.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(7) The department shall ensure that risk and needs assessments drive the department's supervision and correctional practices, including integrating assessment results into supervision contact standards and case management. The department shall regularly validate its risk assessment tool."

Approved April 14, 2017

CHAPTER NO. 200

[HB 22]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE TO ASSIST IN SECURING THE FUTURE OF COMMUNITIES AFFECTED BY THE CLOSURE OF COAL-FIRED GENERATING UNITS IN MONTANA THROUGH PARTICIPATION IN PROCEEDINGS AND RELATED DOCKETS BEFORE OUT-OF-STATE UTILITY OR REGULATORY COMMISSIONS THAT ADDRESS PLANNING FOR THE FUTURE OF COAL-FIRED GENERATION FACILITIES LOCATED IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in March 2016, the Washington Utilities and Transportation Commission agreed to extend the date by which Puget Sound Energy must file a general rate case to allow Puget Sound Energy to continue to work toward developing a plan to address the future of Colstrip Units 1 and 2; and

WHEREAS, Puget Sound Energy has committed to include a comprehensive plan addressing the future of Colstrip Units 1 and 2 in its next general rate case, including a depreciation schedule for all four units that aligns with Puget Sound Energy's most current analysis of the plants' useful life; an analysis of Units 1 and 2 that includes known major maintenance obligations and their projected costs; a narrow window of dates for the planned retirement of Units 1 and 2; detailed information regarding planned decommissioning and remediation activities for Units 1 and 2, including costs associated; and a basic framework for how power replacement decisions will be made if the planned retirement of Units 1 and 2 is out of sync with the development of the 2017 Integrated Resource Plan; and

WHEREAS, the rate case will be filed before the Washington Utilities and Transportation Commission no later than January 17, 2017; and

WHEREAS, the proceedings surrounding Colstrip Units 1 and 2 are complex and rapidly changing, and Montana needs to be prepared to participate and intervene as necessary; and

WHEREAS, Montana has an interest in the proceedings because the decommissioning and remediation of Colstrip Units 1 and 2 will significantly impact Montana's economy, with state and local tax reductions and a general fund tax reduction; Montana has a responsibility to advocate for power replacement decisions by Puget Sound Energy that can benefit the state; state and federal taxpayers in Montana have in the past spent millions of dollars to clean up environmental problems caused by out-of-state corporate failures to properly account for remediation and restoration of Montana's land and water; and Montana must have a seat at the table when a "narrow window of dates" for the planned retirement of Units 1 and 2 is established; and

WHEREAS, the decommissioning of Units 1 and 2 will create an opportunity for long-term central power replacement investments in Montana that will create quality jobs, sustain otherwise affected communities, and strengthen the valuable historic interstate partnerships serving robust power markets between Montana and the West coast.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation for intervention in out-of-state energy proceedings. (1) (a) There is appropriated from the coal natural resource account established in 90-6-1001(2) \$80,000 to the department of justice for the biennium beginning July 1, 2015, to participate in proceedings and related dockets before out-of-state utility or regulatory commissions that address planning for the future of coal-fired generation facilities located in Montana.

(b) For the biennium beginning July 1, 2017, there is appropriated to the department of justice from the coal natural resource account established in 90-6-1001(2) the amount of \$80,000 less any appropriations expended in the previous fiscal year pursuant to subsection (1)(a).

(c) The department shall represent Montana's investment in coal-fired generation facilities by advocating for proper decommissioning and remediation, opportunities for long-term power replacement investments in Montana, and recovery of appropriate social costs, including commitments to benefit and pension plans and workforce and community reinvestment opportunities.

(2) The department of justice may request technical assistance from state government agencies, including but not limited to the department of environmental quality, the department of labor and industry, and the department of public service regulation, to assist in their efforts.

(3) Any funds not expended or encumbered in the biennium revert to the general fund.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 14, 2017

CHAPTER NO. 201

[HB 147]

AN ACT PROVIDING THAT A SEARCH WARRANT IS REQUIRED FOR A GOVERNMENT ENTITY TO ACCESS ANY ELECTRONIC DEVICE UNLESS INFORMED CONSENT IS OBTAINED OR A JUDICIALLY RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENT EXISTS; PROVIDING

A CIVIL CAUSE OF ACTION FOR VIOLATIONS; AND PROVIDING DEFINITIONS AND EXCEPTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) “Authorized user” means a person who has the permission of the owner to possess and operate the electronic device.

(2) “Electronic communication service” means a service that:

- (a) provides to users the ability to send or receive electronic communications;
- (b) provides to users computer storage or processing services; or
- (c) acts as an intermediary in the transmission of electronic communications.

(3) “Electronic device” means a device that enables access to or use of an electronic communication service or remote computing service.

(4) “Government entity” means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.

(5) “Owner” means a person who is the legal owner of the electronic device. If the electronic device is the subject of an agreement for the conditional sale of the electronic device with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the person possessing the device, or in the event the electronic device is subject to a lease, contract, or other legal arrangement vesting the right of possession or control in the person possessing the electronic device, then the owner is the person in whom the right of possession or control is vested.

(6) “Remote computing service” means the provision of computer storage or processing services by means of an electronic communications system.

(7) “Stored data” means data or records that are stored on an electronic device that contains:

- (a) information revealing the identity of users of the applicable service, device, or program;
- (b) information about a user’s use of the applicable service, device, or program;
- (c) information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user;
- (d) the content of a wire communication or electronic communication sent to or by the user; or
- (e) any data, documents, files, or communications stored by or on behalf of the user with the applicable service provider or on the user’s electronic device.

Section 2. Electronic data privacy – warrant required – exceptions.

(1) Except as provided in subsection (2), a government entity may not obtain the stored data of an electronic device without a search warrant issued by a court upon a finding of probable cause.

(2) A government entity may obtain the stored data of an electronic device without a search warrant:

- (a) with the consent of the owner or authorized user of the electronic device;
- (b) in accordance with judicially recognized exceptions to warrant requirements;
- (c) if the owner has voluntarily and publicly disclosed the stored data;
- (d) if the government entity, in good faith, believes that an emergency involving danger, death, or serious physical injury to a person requires immediate disclosure of communications relating to the emergency;
- (e) in order to respond to the user’s call for emergency services; or

(f) for any electronic devices found within the confines of an adult or youth correctional facility.

(3) Nothing in [sections 1 through 3] may be construed to limit a government entity's ability to use, maintain, or store information on its own electronic devices or to disseminate information stored on its own electronic devices.

(4) [Sections 1 through 3] do not apply to motor carrier safety or hazardous materials programs implemented by the department of transportation for purposes of complying with federal motor carrier safety regulations.

Section 3. Civil action for violation. The attorney general may apply for an injunction or commence a civil action against any government entity to compel compliance with the terms of [sections 1 through 3].

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [sections 1 through 3].

Approved April 14, 2017

CHAPTER NO. 202

[HB 149]

AN ACT GENERALLY PROHIBITING THE USE OF A LICENSE PLATE READER BY THE STATE OR A LOCAL GOVERNMENT; PROVIDING EXCEPTIONS; PROVIDING A PENALTY FOR A VIOLATION OF THE PROHIBITION; AND LIMITING ACCESS TO INFORMATION OBTAINED BY USING A LICENSE PLATE READER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of license plate reader prohibited – exceptions – definition – penalty. (1) Except as provided in subsection (2), an agency or employee of the state or any subdivision of the state may not use, either directly or indirectly, a license plate reader on any public highway.

(2) (a) The department of transportation or an incorporated city or town may use a license plate reader:

(i) to collect data for planning. If data is collected under this subsection (2)(a)(i), the department of transportation or city or town shall ensure and maintain the anonymity of the vehicle, the vehicle owner, the driver of the vehicle, and any passengers in the vehicle. Data collected under this subsection (2)(a)(i) without a search warrant or outside of judicially recognized exceptions to search warrant requirements may not be used to investigate or prosecute an individual or as evidence in court.

(ii) in a regulated parking system, but only to identify a vehicle's location and license plate number to enforce parking restrictions.

(b) The department of transportation may use a device and equipment, including license plate readers, if necessary, to implement 61-10-101 through 61-10-104, 61-10-106 through 61-10-110, and 61-10-154 if the devices or equipment are used in screening operations associated with:

(i) virtual ports of entry;

(ii) weigh station ramps using automated weigh station screening systems;

(iii) virtual weigh stations using weigh-in-motion technology; or

(iv) an automatic vehicle identification system that enables participating transponder-equipped vehicles to be prescreened throughout the nation at designated weigh stations, port-of-entry facilities, or agricultural interdiction facilities.

(c) Nothing in this section prohibits an agency of the state or any subdivision of the state from using its own vehicles, aircraft, or equipment, including a license plate reader, to track, monitor, or otherwise maintain information about the agency's or subdivision's vehicles, aircraft, or equipment.

(d) State or local law enforcement may use a device and equipment, including license plate readers if necessary, if the following requirements are met:

(i) A state or local law enforcement agency that uses an automatic license plate reader system shall adopt and publicize a written policy governing its use before the automatic license plate reader system is operational. The policy must address the following:

(A) use of any database to compare data obtained by the automatic license plate reader system;

(B) retention of data associated with the automatic license plate reader system;

(C) sharing of the data with another law enforcement agency;

(D) training of automatic license plate reader system operators;

(E) supervisory oversight of automatic license plate reader system use;

(F) access to and security of data;

(G) access to data obtained by automatic license plate reader systems not operated by the law enforcement agency; and

(H) any other subjects related to automatic license plate reader system use by the law enforcement agency.

(ii) At least once every year, the law enforcement agency shall audit its automatic license plate reader system use and effectiveness and report the findings to the head of the law enforcement agency responsible for operating the system.

(iii) Data obtained by a law enforcement agency in accordance with this subsection (2)(d) must be obtained, accessed, preserved, or disclosed only for law enforcement or criminal justice purposes.

(iv) A law enforcement agency that uses a license plate reader system shall:

(A) maintain a record of users who access license plate reader data. The record must be maintained indefinitely.

(B) keep system maintenance and calibration schedules and records on file.

(v) Operation of a license plate reader by a law enforcement agency and access to data collected by a license plate reader operated by a law enforcement agency must be for official law enforcement purposes only. A license plate reader must be used by a law enforcement agency only to scan, detect, and identify a license plate number for the purpose of identifying a vehicle that is:

(A) stolen;

(B) associated with a wanted, missing, or endangered person;

(C) registered to a person against whom there is an outstanding warrant;

(D) in violation of commercial trucking requirements;

(E) involved in case-specific criminal investigative surveillance;

(F) involved in a homicide, shooting, or other major crime or incident; or

(G) in the vicinity of a recent crime and may be connected to that crime.

(vi) A positive match by a license plate reader alone does not constitute reasonable suspicion as grounds for a law enforcement officer to stop a vehicle. The officer shall:

(A) develop independent reasonable suspicion for the stop; or

(B) immediately confirm visually that the license plate on a vehicle matches the image of the license plate displayed on the license plate reader and confirm by other means that the license plate number meets one of the criteria specified in subsection (2)(d)(v).

(vii) A law enforcement agency that uses an automatic license plate reader system in accordance with this section shall update the system from the databases specified pursuant to subsection (2)(d)(i) every 24 hours if an update is available or as soon as practicable after an update becomes available.

(viii) A license plate reader may be installed for the sole purpose of recording and checking license plates.

(3) A public employee or public officer, as the terms are defined in 2-2-102, who violates the provisions of this section is subject to the applicable penalties provided for in Title 2, chapter 2.

(4) As used in this section, the following definitions apply:

(a) "Law enforcement agency" means:

(i) an agency or officer of the state of Montana or a political subdivision that is empowered by the laws of this state to conduct investigations or to make arrests; and

(ii) an attorney, including the attorney general, who is authorized by the laws of this state to prosecute or to participate in the prosecution of a person who is arrested or who may be subject to a civil action related to or concerning an arrest.

(b) "License plate reader" means a device principally designed and primarily used for determining the ownership of a motor vehicle, the mileage or route traveled by a motor vehicle, the location or identity of a motor vehicle, or the identity of a motor vehicle's occupants on the public highways, as defined in 60-1-103, through the use of a camera or other imaging device or any other device, including but not limited to a transponder, cellular telephone, global positioning satellite, automated electronic toll collection system, automated license plate recognition system, or radio frequency identification device that by itself or in conjunction with other devices or information can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle's occupants or the mileage, location, or route traveled by the motor vehicle.

Section 2. Preservation and disclosure of records by law enforcement agency. (1) Except as provided in subsection (2), captured license plate data obtained by an automatic license plate reader system that is operated by or on behalf of a law enforcement agency for law enforcement purposes pursuant to [section 1(2)(d)] may not be preserved for more than 90 days after the date that the data is captured.

(2) Data obtained by an automatic license plate reader may be preserved for more than 90 days pursuant to any of the following:

(a) a preservation request submitted pursuant to subsection (3);

(b) a search warrant issued pursuant to 46-5-220;

(c) a federal search warrant issued in compliance with the Federal Rules of Civil Procedure.

(3) Upon the request of a law enforcement agency, the custodian of captured license plate data shall take all necessary steps to immediately preserve captured license plate data in its possession. A requesting agency must specify in a sworn written statement:

(a) the location of the particular camera or cameras for which captured license plate data must be preserved;

(b) the particular license plate for which captured license plate data must be preserved;

(c) the date or dates and timeframes for which captured license plate data must be preserved;

(d) specific and articulable facts showing that there are reasonable grounds to believe that the captured license plate data is relevant and material to an

ongoing criminal or missing persons investigation or is needed to prove a violation of a motor carrier safety regulation; and

(e) the case and the identity of the parties involved in the case.

(4) One year from the date of the initial preservation request, the captured license plate data obtained by an automatic license plate reader system must be destroyed according to the custodian's record or data retention policy, unless the custodian receives another preservation request within the 1-year period. If the custodian receives another preservation request, the 1-year retention period resets based on the date of the second request.

(5) License plate data captured in accordance with [section 1] is a public record but is protected from disclosure under the provisions of Title 2, chapter 6, parts 10 through 12, except to the person to whom the license plate is registered.

(6) Nothing in this section may be construed as requiring the disclosure of captured license plate data if a law enforcement agency determines that disclosure of that data will compromise an ongoing investigation.

(7) Captured license plate data gathered by law enforcement may not be sold for any purpose except as provided in [section 1].

Section 3. Confidentiality of information. The information collected or stored in any database under the provisions of [section 1(2)(a) through (2)(c)]:

(1) is private, is not a public record, and is not subject to public disclosure;

(2) may be accessed by an employee of the state or a political subdivision of the state only for the purpose of providing customer service or for statistical, administrative, or legal activities necessary to perform the employee's duties; and

(3) may be maintained only for the time minimally necessary, but no more than 18 months.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [sections 1 through 3].

Approved April 14, 2017

CHAPTER NO. 203

[HB 374]

AN ACT CLARIFYING THAT CERTAIN UTILITY FACILITIES MAY OCCUPY A HIGHWAY RIGHT-OF-WAY; REQUIRING THAT RULES ADOPTED FOR OCCUPANCY AND RELOCATION OF UTILITIES IN A HIGHWAY RIGHT-OF-WAY INCLUDE PROVISIONS FOR PUBLICLY OWNED WATER AND SEWER FACILITIES; AND AMENDING SECTIONS 60-4-401 AND 60-4-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-401, MCA, is amended to read:

"60-4-401. Relocation Occupancy and relocation – definitions. For the purposes of this part, unless otherwise indicated, terms are defined as follows:

(1) (a) "Cost of relocation" means the amount paid by the utility for material, labor, and equipment properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(b) "Cost of relocation" does not mean engineering costs for designing, locating, staking, inspecting, or any other incidental costs of engineering.

(2) "Facility" means a utility's tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances impacted by a project on a federal-aid system or state highway.

(3) "Federal-aid systems" includes the following, as defined in 60-2-125:

- (a) national highway system;
- (b) primary highway system;
- (c) secondary highway system; and
- (d) urban highway system.

(4) "State highway" means that term, as defined in 60-2-125.

(5) "Utility" includes publicly, privately, and cooperatively owned utilities, *including water and sewer facilities.*"

Section 2. Section 60-4-402, MCA, is amended to read:

"60-4-402. Relocation Occupancy and relocation of utility facilities – rules. ~~Except as provided in 60-4-403(2) and (3), the~~ *The department may shall* adopt reasonable rules *governing right-of-way occupancy by a utility and, except as provided in 60-4-403(2) and (3), for the reimbursement to a utility for the costs of installation, construction, maintenance, repair, renewal, or relocation of facilities. The rules must provide for right-of-way occupancy and relocation of publicly owned water and sewer facilities. The rules must ensure that the nonhighway use of the right-of-way does not affect the department's ability to maintain and operate the highway in a safe manner.*"

Approved April 14, 2017

CHAPTER NO. 204

[HB 539]

AN ACT LIMITING CARRYFORWARD APPROPRIATIONS TO CERTAIN ONE-TIME-ONLY EXPENDITURES; REQUIRING AN AGENCY TO REPORT USE OF CARRYFORWARD APPROPRIATIONS TO THE APPROVING AUTHORITY; AMENDING SECTION 17-7-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-304, MCA, is amended to read:

"17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance and to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and

equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) (a) Subject to subsection (4)(b), after the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years ~~for any purpose~~ *for any purpose, except for increases in pay that is is* consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

(b) (i) Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to a legislative branch entity may be deposited in the account established in 5-11-407.

(ii) After the end of a biennium, any portion of the unexpended and unencumbered money appropriated for the operation of the preceding legislature in a separate appropriation act may be deposited in the account established in 5-11-407. The approving authority shall determine the portion of the unexpended and unencumbered money that is deposited in the account.

(5) *When the carryforward appropriation authority is established on the accounting system, and prior to spending funds pursuant to subsection (4), an agency must report to the approving authority how those funds will be spent in the following 2 years."*

Section 2. Effective date. [This act] is effective July 1, 2017.

Approved April 14, 2017

CHAPTER NO. 205

[SB 139]

AN ACT REVISING THE ELIGIBILITY CRITERIA, PROCEDURE, AND FUNDING FOR AN EXISTING ELEMENTARY SCHOOL DISTRICT TO EXPAND INTO A K-12 SCHOOL DISTRICT; ALLOWING AN ELEMENTARY SCHOOL DISTRICT WITH AT LEAST 1,000 ANB TO EXPAND INTO A K-12 SCHOOL DISTRICT UNDER CERTAIN CONDITIONS, INCLUDING THE PASSAGE OF A BOND TO BUILD OR OUTFIT A HIGH SCHOOL BUILDING; REQUIRING THE EXISTING HIGH SCHOOL DISTRICT TO PROVIDE INSTRUCTION TO K-12 DISTRICT HIGH SCHOOL STUDENTS FOR A PERIOD OF TIME AND THE K-12 DISTRICT TO PAY THE HIGH SCHOOL DISTRICT FOR PROVIDING THIS INSTRUCTION; PROVIDING PROCEDURES FOR THE K-12 DISTRICT TO ESTABLISH BUDGETS AS IT OPENS A NEW HIGH SCHOOL; CLARIFYING BONDED INDEBTEDNESS THROUGHOUT THE EXPANSION PROCESS; PROVIDING FOR PROPORTIONAL DISTRIBUTION OF BLOCK GRANTS TO THE RESULTING

DISTRICTS; AMENDING SECTIONS 20-6-326, 20-9-502, AND 20-9-630, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-326, MCA, is amended to read:

“20-6-326. Procedure for creation of high school district solely for expansion into expansion of elementary school district into K-12 school district – trustee resolution. (1) An existing elementary district *that is not part of a unified school system or governed by a joint board with a high school district* may create a high school district solely for the purpose of expanding an elementary district expand into a K-12 district under the procedures outlined in this section only if the elementary district's ANB, as calculated under the provisions of 20-9-311, is at least 1,000.:

(a) ~~the nearest elementary school building is located at a distance of at least 40 miles from the nearest accessible high school;~~

(b) ~~the trip from the nearest elementary school building to the nearest accessible high school is 60 minutes or more over the shortest passable route;~~

(c) ~~periodically during the school year, the condition of the road makes it impractical to attend the nearest accessible high school; and~~

(d) ~~at least 50 high school students reside in the elementary district; and~~

(e) ~~the taxable valuation and boundaries of the combining elementary and high school district are the same.~~

(2) ~~The creation of a new high school district expansion to a K-12 district may be requested by the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition to create a high school district solely for the purpose of expanding the elementary school district into a K-12 district. Approval of the proposition results in a tax levy for payments as provided in subsection (6)(b). The trustees of an existing elementary district with an ANB of at least 1,000 may not pass a resolution for expansion more than one time within a 5-year period.~~

(3) (a) ~~If the proposition for the expansion and the transition levy provided for in 20-9-502(6) is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, the county superintendent shall order the creation of the high school district and oversee the expansion of the high school district into a K-12 district pursuant to 20-6-701 for a period of 2 years from the date of the certification of the election the elementary trustees have the authority to propose to the electors of the elementary district:~~

(i) ~~a transition costs levy pursuant to 20-9-502; and~~

(ii) ~~a general obligation bond pursuant to Title 20, chapter 9, part 4, for the purpose of building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school to accommodate high school students.~~

(b) ~~The bond limitations pursuant to 20-9-406 imposed on a district proposing a bond under subsection (3)(a) must be calculated on the limits for a K-12 district with the high school ANB calculated by dividing the ANB of the elementary district by 9 and multiplying the result by 4.~~

(c) ~~A bond approved under subsection (3)(a) becomes a bond of, and may not be issued until the creation of, the K-12 district formed pursuant to subsection (4).~~

(d) ~~A district that issues a bond under this subsection (3) is eligible for facility reimbursements and advances pursuant to 20-9-366 through 20-9-371~~

that, until the new high school has enrolled students in all grades and has established an actual ANB for budgeting purposes, must be based on an estimated high school ANB calculated by dividing the ANB of the elementary district by 9 and multiplying the result by 4.

(e) Until the county superintendent orders the creation of a new high school district and attachment of the expanding elementary district to form a new K-12 district pursuant to subsection (4), the existing high school district remains intact for all purposes.

(4) If elementary electors approve a bond pursuant to subsection (3), on July 1 following the approval of the bond the county superintendent shall order the creation of a new high school district with identical boundaries to the expanding elementary district and the immediate attachment of the expanding elementary district to form a K-12 district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district. The trustees of the expanding elementary district must be designated as the trustees of the new K-12 district.

(5) Prior to the first school fiscal year in which the K-12 district will enroll students in a high school grade, the K-12 trustees shall prepare operating budgets for the new high school according to the school budgeting provisions of this title, except that:

(a) the ANB for the high school program of the K-12 district must be estimated by the trustees and may not exceed the number resulting from dividing the ANB of the elementary program by 9 and multiplying the result by the number of grades in which the high school will enroll students;

(b) the number of quality educators for the high school program must be estimated by the trustees and may not exceed the number resulting from dividing the ANB estimated under subsection (5)(a) by 10;

(c) the taxable value for budgeting purposes of both the elementary and high school programs of the K-12 district must be based on the taxable value as most recently determined by the department of revenue;

(d) the general fund budget adopted by the trustees must be based on only the basic entitlement, the quality educator payment, and the budget components derived from ANB counts; and

(e) the district's BASE aid for the upcoming year must be based on the general fund budget adopted by the trustees for the upcoming school year.

(6) Until the first school year in which the K-12 school district enrolls high school students in all grades and for a period of time not to exceed 6 years following the creation of the K-12 district:

(a) the high school district shall provide high school instruction to high school students of the K-12 district in any grades in which the K-12 district is not enrolling students;

(b) the K-12 district shall be responsible for providing transportation for its students enrolled in the high school district pursuant to subsection (6)(a), may establish a transportation budget for this purpose, and may receive state and county reimbursements under Title 20, chapter 10; and

(c) the K-12 district shall pay the high school district 20% of the per-ANB maximum rate established in 20-9-306 for each of its students enrolled in the high school district with one-half of the amount due by December 31 of the year following the year of attendance and the remainder due no later than June 15 of the year following the year of attendance. The K-12 trustees shall establish a tuition fund and levy to fund these payments.

(5) If a new district is created, the effective date of its creation is the following July 1. The trustees of the elementary district must be designated as the trustees of the new K-12 district.

(6) Until the first school fiscal year in which the new K-12 district enrolls high school students in all grades, the existing high school district shall provide high school instruction to students residing in the newly created K-12 district with the K-12 district paying the existing high school district:

(a) ~~tuition and transportation charged pursuant to the provisions of 20-5-320 and 20-5-321; and~~

(b) ~~an amount equal to the BASE general fund mills for the existing high school district assessed against the taxable valuation in the new K-12 district and funded using a building reserve fund levy for transition costs as provided in 20-9-502. The payment to the existing high school district must be deposited in the district general fund and used to reduce the BASE budget levy.~~

(7) ~~If bonded indebtedness has been approved by the voters of the existing high school district prior to April 12, 2007, but the bonds have not been sold prior to the creation of the new K-12 district, then the future indebtedness of those bonds when those bonds are sold must be paid by levies on the original territory.~~

(8) ~~If the K-12 school district does not open and operate a high school within 3 years after the effective date of the creation of the new district, the order of the county superintendent creating a new district under this section is void, the new district ceases to exist, and the trustees of the new district have no capacity to act. Those trustees retain authority as trustees of the elementary district.~~

(7) (a) Bonded indebtedness of the high school district that is outstanding as of the date of creation of the K-12 district must remain secured by and be the indebtedness of the original territory against which the bonds of the high school district were issued and must be paid by tax levies against the original territory.

(b) Bonded indebtedness of the high school district that is issued by the high school district following the creation of the K-12 district is secured by the territory of the high school district as of the date of issuance of the high school district bonds and must be paid by tax levies against the territory of the high school district. However, if bonds of the high school district were approved at a bond election conducted before the creation of the K-12 district, all bonds of the high school district issued by the high school district under the bond election authority must remain secured by and be the indebtedness of the territory of the high school district as of the date the bond authority was approved by voters and must be paid by tax levies against that territory.

(c) Bonded indebtedness of the K-12 district is secured by the territory of the K-12 district as of the date of issuance of the K-12 district bonds and must be paid by tax levies against the territory of the K-12 district.

(d) Bonded indebtedness of the elementary district that is outstanding as of the date of creation of the K-12 district must become upon the date of creation of the K-12 district the bonded indebtedness of the K-12 district and must be secured by the territory of the K-12 district and paid by tax levies against the territory of the K-12 district. The debt service on the bonds must be allocated to the elementary program of the K-12 district.

(e) Bonded indebtedness of the high school district or the K-12 district that is subsequently affected by a later reorganization of the high school district or the K-12 district is governed by the provisions of Title 20, chapter 6, part 4.

(8) When a K-8 district expands to a K-12 district as provided for in this section, a principal, teacher, or other certified employee of the original high school district who has a right of tenure under Montana law must be given preference in hiring for a vacant position in the new K-12 district for which the employee is qualified with the required certification endorsements."

Section 2. Section 20-9-502, MCA, is amended to read:

“20-9-502. Purpose and authorization of building reserve fund by election – levy for school transition costs. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings, for the purpose of purchasing land needed for school purposes in the district, or for the purpose of funding school transition costs as provided in ~~subsections~~ *subsection (5) and (6)*. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(2) Except as provided in ~~subsections~~ *subsection (5)(b) and (6)*, a building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:

(i) open a new school under the provisions of Title 20, chapter 6;

(ii) close a school;

(iii) replace a school building; or

(iv) consolidate with or annex another district under the provisions of Title 20, chapter 6; or

(v) *receive approval from voters to expand an elementary district into a K-12 district pursuant to 20-6-326.*

(b) Except as provided in ~~subsections~~ *subsection (5)(c) and (6)*, the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. ~~Except as provided in subsection (6), the~~ *The* duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

(i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

~~(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by 20-6-326(6)(b) when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to 20-6-326(2). The levy is limited to the amount required by 20-6-326(6)(b) for a period not to exceed 3 years."~~

Section 3. Section 20-9-630, MCA, is amended to read:

"20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on:

(i) the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate income taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999; and

(ii) any reimbursement to be made to a school district pursuant to subsection (2).

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

(2) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the office of public instruction shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to block grant distributions under this section. Except for the reimbursement made under 15-1-123(3)(b), the total of reimbursement distributions made pursuant to this subsection in a fiscal year must be added to all other distributions to the school district in the fiscal year to determine the distribution for the subsequent fiscal year.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district general fund is equal to the amount received in fiscal year 2011 by the district general fund from the block grants provided for in subsection (1) and the amount received by the district general fund under subsection (2), except the amount received under 15-1-123(3)(b).

(b) The block grant for the district transportation fund is equal to the amount received in fiscal year 2011 by the district transportation fund from the block grants provided for in subsection (1) and the amount received by the district transportation fund under subsection (2), except the amount received under 15-1-123(3)(b).

(c) (i) The combined fund block grant is equal to the amount received in fiscal year 2011 and the amount received under subsection (2), except the amount received under 15-1-123(3)(b).

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district.

(5) *Upon creation of a new K-12 district under the provisions of 20-6-326, new block grant payments to the resulting high school district and the new K-12 district must be established by the office of public instruction based on the proportion of each district's taxable valuation."*

Section 4. Effective date. [This act] is effective July 1, 2017.
Approved April 18, 2017

CHAPTER NO. 206

[HB 469]

AN ACT REVISING HEALTH INSURANCE LAWS TO EXPAND FREEDOM OF CHOICE TO LICENSED MARRIAGE AND FAMILY THERAPISTS; AMENDING SECTION 33-22-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

“33-22-111. Policies and certificates to provide for freedom of choice of practitioners – professional practice not enlarged. (1) All policies or certificates of disability insurance, including individual, group, and blanket policies or certificates, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician assistant, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, *licensed marriage and family therapist*, acupuncturist, naturopathic physician, physical therapist, speech-language pathologist, audiologist, licensed addiction counselor, or advanced practice registered nurse as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person’s practice. Whenever the policies or certificates insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.”

Section 2. Coverage for services provided under freedom of choice for mental health services. A health service corporation shall provide, in group and individual insurance contracts, coverage for health services provided by marriage and family therapists licensed under Title 37, chapter 37, if the health care services that marriage and family therapists are licensed to perform are covered by the contracts.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30, part 10, apply to [section 2].

Section 4. Effective date. [This act] is effective January 1, 2019.

Approved April 18, 2017

CHAPTER NO. 207

[HB 495]

AN ACT REVISING LAWS CONCERNING THE DISCHARGE OF PATIENTS FROM MENTAL HEALTH FACILITIES; CLARIFYING THAT PATIENTS NO LONGER IN NEED OF COMMITMENT MAY BE DISCHARGED BY ORDER OF PROFESSIONAL PERSONS WITHOUT FURTHER COURT ORDERS; CLARIFYING THAT NOTICE REQUIREMENTS MAY NOT DELAY THE

DISCHARGE OF PATIENTS; AND AMENDING SECTIONS 53-21-163, 53-21-181, AND 53-21-183, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-163, MCA, is amended to read:

“53-21-163. Examination following commitment. Within 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or the professional person’s appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether the patient continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, the patient must be released immediately *without further order of the court* unless the patient agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact must be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient’s counsel.”

Section 2. Section 53-21-181, MCA, is amended to read:

“53-21-181. Discharge during or at end of initial commitment period – patient’s right to referral. (1) At any time within the period of commitment provided for in 53-21-127, the patient may be discharged on the written order of the professional person in charge of the patient *without further order of the court*. If the patient is not discharged within the period of commitment and if the term is not extended as provided for in 53-21-128, the patient must be discharged by the facility at the end of the period of commitment without further order of the court. Notice of the discharge must be filed with the court and the county attorney at least 5 days prior to the discharge. *Failure to comply with the notice requirement may not delay the discharge of the patient.*

(2) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services.”

Section 3. Section 53-21-183, MCA, is amended to read:

“53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period that, when added to the inpatient treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the designated outpatient facility shall agree in writing to assume the responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient’s case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, if the transfer is in the best interest of the patient and the designated outpatient facility agrees in writing to assume responsibility. Notice of an intended transfer must be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court that committed the patient for treatment and the county attorney who initiated the action must be provided by the professional person in charge of the patient at least 5 days prior to the patient’s

release from commitment or outpatient care. *Failure to comply with the notice requirement may not delay the release of the patient from commitment or outpatient care.*

(4) Sections 53-21-195 through 53-21-198 and this section do not apply to a temporary release, certified by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.”

Approved April 18, 2017

CHAPTER NO. 208

[SB 17]

AN ACT PROVIDING THAT JUVENILE OFFENDERS WITH NO HISTORY OF SEXUAL OFFENSES OR FOR WHOM REGISTRATION IS NOT NECESSARY TO PROTECT THE PUBLIC DO NOT HAVE TO REGISTER AS SEXUAL OFFENDERS; AMENDING SECTION 41-5-1513, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-1513, MCA, is amended to read:

“41-5-1513. Disposition – delinquent youth – restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) subject to the provisions of subsection (6), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, ~~and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5; the youth is exempt the youth~~ from the duty to register ~~as a sexual offender pursuant to Title 46, chapter 23, part 5, if unless~~ the court finds that:

(i) the youth has ~~not~~ previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; ~~and or~~

(ii) registration is ~~not~~ necessary for protection of the public and that relief ~~from~~ registration is in the public’s best interest;

(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509;

(c) require completion of sexual offender treatment; and

(d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose on the youth those restrictions required for adult offenders by 46-18-255(2) unless the youth is approved by the youth court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to 41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the supervision of the offender is transferred to the department.

(3) For a youth designated under this section and 46-23-509 as a level 3 offender, the youth court if the youth is under the youth court's jurisdiction or the department if the youth is under the department's jurisdiction shall notify in writing the superintendent of the school district in which the youth is enrolled of the adjudication, any terms of probation or parole, and the facts of the offense for which the youth was adjudicated, except the name of the victim, and provide a copy of the court's disposition order to the superintendent.

(4) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth, except as provided in 52-5-109.

(5) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

(6) The duration of registration for a youth who is required to register as a sexual or violent offender must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

Section 2. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 20, 2017

CHAPTER NO. 209

[SB 287]

AN ACT TRANSFERRING \$14 MILLION FROM THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT TO THE BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT; REQUIRING FUNDS TO BE SPENT PURSUANT TO THE BIRCH CREEK AGREEMENT; AMENDING SECTION 85-20-1504, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-20-1504, MCA, is amended to read:

“85-20-1504. Blackfeet Tribe water rights compact mitigation account – use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact mitigation account. The department shall administer the account. Up to \$650,000 each fiscal year of interest and earnings on the account must be deposited in the account.

(2) The Blackfeet Tribe water rights compact mitigation account may be used only for:

(a) expenditures for grants to or matching funds for federal or other grants to water right holders under state law for water from Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, and the portion of the Milk River within the exterior boundaries of the Blackfeet Indian Reservation for projects approved by the department to enhance water availability or otherwise mitigate the economic and hydrologic impacts on water right holders under state law caused by the development of the Blackfeet Tribe’s water rights under a water rights compact pursuant to 85-2-702 quantifying the water rights of the Blackfeet Tribe; and

(b) implementation of the water rights compact among the Blackfeet Tribe, the state, and the United States and any associated agreements as may be specified in the compact or agreements.

(3) The department may expend up to \$650,000 each fiscal year of the interest and income on the escrow account provided for in subsection ~~(4)(b)~~ ~~(4)(c)~~ for the purposes described in subsection (2)(b). This money is statutorily appropriated, as provided in 17-7-502.

(4) (a) At least \$4.5 million of this account must be dedicated to mitigate impacts on water right holders under state law for use of water out of Birch Creek.

(b) *The amount of \$14 million in this account must be used to mitigate impacts of development of the Tribal Water Right on water users as provided for in a February 13, 2009, amendment to an agreement between the Blackfeet Tribe of the Blackfeet Indian Reservation and the state of Montana regarding Birch Creek Water Use entered into January 31, 2008.*

~~(b)(c)~~ (c) The amount of \$10 million in this account must be held in escrow. The department shall negotiate the terms of an escrow agreement.

(5) Except as provided in subsection (3), funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.”

Section 2. Transfer of funds. The state treasurer shall transfer \$14 million from the Blackfeet Tribe water rights compact infrastructure account established in 85-20-1505 to the Blackfeet Tribe water rights compact mitigation account established in 85-20-1504.

Section 3. Contingent effective date. [This act] is effective on the date the governor certifies to the code commissioner that the United States has ratified the Blackfeet Tribe-Montana-United States Compact, that the legislation references the Birch Creek Agreement as amended in February 2009, and that the United States contributes at least \$14 million for projects related to the Four Horns Project.

Approved April 20, 2017

CHAPTER NO. 210

[HB 73]

AN ACT PROVIDING FOR REGULATION UNDER THE INSURANCE CODE FOR CERTAIN PRIVATE AIR AMBULANCE SERVICE MEMBERSHIP AGREEMENTS; REMOVING AN EXEMPTION FROM INSURANCE REGULATION; ESTABLISHING FEES, LICENSING, TRADE, FORM FILING, AND RECORDKEEPING REQUIREMENTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-1-102 AND 50-6-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Certificate of authority required. (1) A private air ambulance service subject to [sections 1 through 9] shall obtain a certificate of authority from the commissioner prior to selling, soliciting, or negotiating a membership agreement in Montana.

(2) A private air ambulance service applying for a certificate of authority shall submit an application on a form prescribed by the commissioner.

(3) The commissioner may issue a certificate of authority if the private air ambulance service has complied with the applicable provisions of Title 50 and this title unless the commissioner finds that issuance of the certificate of authority is contrary to the public interest.

(4) A private air ambulance service may renew its certificate of authority upon payment of the annual fee specified in [section 2] on or before March 1 of each year and upon continued compliance with the applicable provisions of Title 50 and this title.

(5) The requirements of this section are in addition to any other licensing or registration requirements that apply to the private air ambulance service.

Section 2. Fees. A private air ambulance service subject to [sections 1 through 9] shall pay the following fees to the commissioner for services rendered:

(1) issuance of a certificate of authority, \$300;

(2) annual renewal fee, \$300; and

(3) filing of a membership agreement or other forms, \$50.

Section 3. Filings. (1) Pursuant to Title 33, chapter 1, part 5, a private air ambulance service subject to [sections 1 through 9] shall file for approval any membership agreement, including any rider or endorsement.

(2) A filing under subsection (1) must include all fee schedules associated with the membership agreement.

Section 4. Suspension or revocation. (1) The commissioner may suspend or revoke a private air ambulance service certificate of authority if the private air ambulance service:

(a) no longer meets the requirements for the certificate of authority;

(b) materially fails to comply with a membership agreement issued to residents of Montana;

(c) is in unsound fiscal condition or is demonstrated to be using methods or practices in the conduct of its business that render its further transaction of insurance in this state injurious or hazardous to its members or to the public; or

(d) violates an applicable provision of law.

(2) Unless otherwise provided in the order of suspension or revocation, the private air ambulance service shall continue to honor membership agreements that are in force at the time of revocation or suspension.

Section 5. Trade practices. (1) A private air ambulance service subject to [sections 1 through 9] may not use health status as a reason to:

(a) refuse to issue or renew a membership agreement;

(b) assess a differing rate or charge for the membership agreement; or

(c) exclude a specific individual for a membership agreement issued for a household or other group of individuals.

(2) A private air ambulance service subject to [sections 1 through 9] may not sell, solicit, negotiate, or advertise a membership program in a geographic area for which the private air ambulance does not routinely provide service.

(3) Except as provided in subsection (4)(b), if membership coverage of a transport is conditioned on a finding of medical necessity, a qualified medical professional shall render the determination.

(4) A membership agreement requirement of medical necessity is satisfied if:

(a) the treating physician requesting the transport certifies that the transport is medically necessary; or

(b) the member's insurer determines that the transport is medically necessary.

Section 6. Membership agreement – contents. A membership agreement issued under [sections 1 through 9] must contain:

(1) the effective dates of the membership agreement;

(2) a grace period of 30 days for payment of a renewal membership fee;

(3) a description of what constitutes acceptable insurance coverage if eligibility for the membership agreement is conditioned on the member's current and continuing health insurance coverage;

(4) a statement that, except for decisions made as provided in 33-1-102(6), individuals enrolled in medicare, medicaid, or the healthy Montana kids plan under Title 53, chapter 4, part 11, are not subject to charges billed by a private air ambulance service in excess of applicable deductibles, coinsurance, and copayments;

(5) a statement that the membership agreement is an insurance contract;

(6) a description and graphic illustration of the base locations and effective coverage area of the private air ambulance service;

(7) a list of other private air ambulance services with which reciprocity exists under 50-6-320;

(8) a statement that:

(a) participation in a membership program does not guarantee that in the event of a transport, the private air ambulance service will provide the transport; and

(b) unless reciprocity exists under 50-6-320, if another private air ambulance service provides the transport, the individual will not receive the benefits provided under the membership agreement; and

(9) a definition of "medical necessity" if membership coverage of a transport is conditioned on a finding of medical necessity.

Section 7. Recordkeeping requirements. (1) A private air ambulance subject to [sections 1 through 9] shall keep records of:

- (a) all insurance transactions conducted in Montana; and
- (b) all transports provided to individuals entering into membership agreements.

(2) A private air ambulance service subject to this section shall make the records under subsection (1) available to the commissioner on request.

Section 8. Relationship to other laws. (1) Except as provided in subsection (2), the chapters and provisions of this title do not apply to a private air ambulance service.

(2) Title 33, chapter 1, parts 3, 4, 5, 12, and 13, chapter 18, parts 2 and 10, and chapter 19 as well as [sections 1 through 9] apply to a private air ambulance service that offers a membership program covering out-of-pocket expenses in excess of deductibles, copays, and coinsurance incurred for out-of-network services using the private air ambulance service or to private air ambulance services that are out-of-network and with which the membership program has reciprocity.

(3) A membership program of the type described in subsection (2) is insurance as defined in 33-1-201.

Section 9. Rulemaking authority. The department shall adopt rules necessary to implement this part.

Section 10. Section 33-1-102, MCA, is amended to read:

“33-1-102. (Temporary) Compliance required – exceptions – health service corporations – health maintenance organizations – governmental insurance programs – service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

- (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
- (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
- (c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) Except as provided in Title 33, chapter 40, part 1, this code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, part 21, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any arrangement, plan, or interlocal agreement

between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) *Except as provided in [section 8],* this code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151 through 30-14-157. (Terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)

33-1-102. (Effective January 1, 2018) Compliance required – exceptions – health service corporations – health maintenance organizations – governmental insurance programs – service contracts.

(1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, part 21, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) ~~This~~ *Except as provided in [section 8],* this code does not apply to private air ambulance services that are in compliance with 50-6-320 and that

solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151 through 30-14-157.”

Section 11. Section 50-6-320, MCA, is amended to read:

“50-6-320. Private air ambulance service – findings – exemptions from insurance code. (1) The legislature finds that there is a need to assist Montana consumers with regard to the availability and affordability of air ambulance service.

(2) *A Except as provided in subsection (3), a private air ambulance service that solicits membership subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services to subscription members and designated members of their households is not an insurer as defined in 33-1-201, a health carrier as defined in 33-36-103, a health service corporation as defined in 33-30-101, or a health maintenance organization as defined in 33-31-102 if the private air ambulance service:*

(a) is licensed in accordance with 50-6-306;

(b) has been in operation in Montana for at least 2 years; and

(c) has submitted evidence of its compliance with this section to the department.

(3) *The provisions of Title 33 prescribed in [section 8] apply to a private air ambulance service that offers a membership program covering out-of-pocket expenses in excess of deductibles, copays, and coinsurance incurred for out-of-network services using the private air ambulance service or to private air ambulance services that are out-of-network and with which the membership program has reciprocity.*

~~(3)(4) Any A private air ambulance service membership program must have arrangements reciprocity agreements with all other air ambulance service providers in Montana to the extent reasonably possible with air ambulance service membership programs to ensure maximum geographic coverage within the state for the subscribers to the program.”~~

Section 12. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 9].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date – applicability. [This act] is effective on passage and approval and applies to private air ambulance membership agreements sold, solicited, or negotiated on or after [the effective date of this act] for purposes of out-of-network coverage of out-of-pocket expenses in excess of deductibles, copays, and coinsurance.

Approved April 20, 2017

CHAPTER NO. 211

[HB 97]

AN ACT INCREASING THE MAXIMUM PAYMENT A LANDOWNER WHO PARTICIPATES IN THE HUNTER MANAGEMENT OR HUNTING ACCESS

ENHANCEMENT PROGRAMS MAY RECEIVE; AMENDING SECTION 87-1-267, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-267, MCA, is amended to read:

“87-1-267. Hunting access enhancement program – benefits for providing hunting access – cooperative agreement – factors for determining benefits earned – restriction on landowner liability.

(1) As provided in 87-1-265, the department may establish and administer a voluntary program to enhance the block management program, to be known as the hunting access enhancement program. The program must be designed to provide tangible benefits to participating private landowners who grant access to their land for public hunting.

(2) Land is not eligible for inclusion in the hunting access enhancement program if outfitting or commercial hunting restricts public hunting opportunities.

(3) A contract for participation in the hunting access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

- (a) hunting access management;
- (b) services to be provided to the public;
- (c) ranch rules and other restrictions; and
- (d) any other management information to be gathered, which must be made available to the public.

(4) If the department determines that the plan referred to in subsection (3) may adversely influence game management decisions or wildlife habitat on public lands outside the block management area, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner’s management goals and personal observations regarding game populations and habitat use must be considered in developing the plan.

(5) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public hunting access. Benefits will be provided to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

- (a) the number of days of public hunting provided by a participating landowner;
- (b) wildlife habitat provided;
- (c) resident game populations;
- (d) number, sex, and species of animals taken; and
- (e) access provided to adjacent public lands.

(6) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

(a) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(b) A landowner may direct fire protection payments to be made to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(c) A landowner may receive direct payment to offset insurance costs incurred for allowing public hunting access.

(d) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(7) (a) The commission may provide a total of not more than \$12,000 \$15,000 a year to a landowner who participates in the hunter management program or hunting access enhancement program, or both.

(b) *By increasing the maximum payment to \$15,000 on [the effective date of this act], it is the legislature's intent to provide the opportunity for the commission to increase payments made to landowners on a per-hunter-day or equivalent basis by \$2 dollars per year.*

(8) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunting access enhancement program."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2017

CHAPTER NO. 212

[HB 140]

AN ACT CLARIFYING THE THRESHOLD FOR WATER COMMISSIONER APPOINTMENTS; AND AMENDING SECTION 85-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree *or at least 15% of the flow rate of the water rights affected by the decree*, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected *or at least 15% of the flow rate of the water rights affected* and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source,

appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees, certificate holders, and holders of a change in appropriation right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner."

Approved April 20, 2017

CHAPTER NO. 213

[HB 156]

AN ACT EXTENDING THE STATUTORY APPROPRIATION FOR THE COUNTY PAYMENT FROM THE HARD-ROCK MINING IMPACT TRUST FUND; AMENDING SECTION 5, CHAPTER 442, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5, Chapter 442, Laws of 2009, is amended to read:
"Section 5. Termination. [This act] terminates June 30, ~~2019~~ 2027."

Section 2. Effective date. [This act] is effective on passage and approval.
Approved April 20, 2017

CHAPTER NO. 214

[HB 200]

AN ACT REVISING LAWS REGARDING SHARED EQUITY PROPERTIES; PROVIDING THAT A COMMUNITY LAND TRUST OR A HOUSING UNIT ON LAND BELONGING TO A COMMUNITY LAND TRUST ARE NOT CONDOMINIUMS WITHIN THE MEANING OF THE UNIT OWNERSHIP ACT; DEFINING "COMMUNITY LAND TRUST"; AMENDING SECTION 70-23-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-23-102, MCA, is amended to read:

"70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(5) "*Community land trust*" means a nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code that holds title to land beneath individually owned housing units for the purpose of preserving affordable housing.

~~(5)~~(6) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter. The term does not include a townhome, or townhouse, *community land trust*, or a *housing unit located on land belonging to a community land trust*.

~~(6)~~(7) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

~~(7)~~(8) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion of the land included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

(8)(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

(9)(10) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in the element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means the percentage in the aggregate of undivided ownership.

(10)(11) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

(11)(12) "Project" means a real estate condominium project whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for sale.

(12)(13) "Property" means the land, all buildings, improvements, and structures on the land, and all easements, rights, and appurtenances belonging to the land that are submitted to the provisions of this chapter.

(13)(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or other instruments or documents affecting the title to real property.

(14)(15) "Townhome" or "townhouse" means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

(15)(16) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts of the property intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16)(17) "Unit designation" means the number, letter, or combination of numbers and letters designating a unit in the declaration.

(17)(18) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit must be considered a unit owner."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2017

CHAPTER NO. 215

[HB 208]

AN ACT REVISING LAWS RELATED TO ETHICS AND STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS AND PUBLIC EMPLOYEES; PROVIDING THAT IT IS UNLAWFUL TO RETALIATE AGAINST A PERSON WHO ALLEGES WASTE, FRAUD, OR ABUSE; AND PROVIDING FOR CIVIL LIABILITY AND REMEDIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Retaliation unlawful – civil liability – remedies – statute of limitations. (1) It is unlawful for a state agency, state officer, public officer, or public employee to retaliate against, or to condone or threaten retaliation against, an individual who, in good faith, alleges waste, fraud, or abuse. For purposes of this section, the term “state agency” has the meaning provided in 1-2-116.

(2) For purposes of this section, “retaliate” means to take any of the following actions against an individual because the individual, in good faith, alleged waste, fraud, or abuse:

- (a) terminate employment;
- (b) demote;
- (c) deny overtime, benefits, or promotion;
- (d) discipline;
- (e) decline to hire or rehire;
- (f) threaten or intimidate;
- (g) reassign to a position that hurts future career prospects;
- (h) reduce pay, work hours, or benefits; or
- (i) take another adverse personnel action.

(3) A person who violates a provision of this section is liable in a civil action in a court of competent jurisdiction. The provisions of 2-9-305 apply if the person is being sued in a civil action for actions taken within the course and scope of the person’s employment and the person is a state officer, public officer, or public employee. For purposes of this section, the term “person” has the meaning provided in 2-5-103.

(4) Remedies available to an aggrieved individual for a violation may include:

- (a) reinstatement to a lost position;
- (b) compensation for lost benefits, including service credit;
- (c) compensation for lost wages;
- (d) payment of reasonable attorney fees;
- (e) payment of court costs;
- (f) injunctive relief; and
- (g) compensatory damages.

(5) A lawsuit alleging a violation of this section must be brought within 2 years of the alleged violation.

(6) If a state agency maintains written internal procedures under which an individual may appeal an action described in subsection (2) within the agency’s organizational structure, the individual shall first exhaust those procedures before filing an action under this section. The individual’s failure to initiate or exhaust available internal procedures is a defense to an action brought under this section.

(7) For purposes of this subsection, if the state agency’s internal procedures are not completed within 90 days from the date the individual may file an action under this section, the agency’s internal procedures are considered exhausted. The limitation period in subsection (5) is tolled until the procedures are exhausted. The provisions of the agency’s internal procedures may not in any case extend the limitation period in subsection (5) more than 240 days.

(8) If the state agency maintains written internal procedures described in subsection (6), the agency shall, within 7 days of receiving written notice from the complaining individual of the action described in subsection (2), notify the individual of the existence of the written procedures and supply the individual with a copy. If the agency fails to comply with this subsection, the individual is relieved from compliance with subsection (6).

(9) The commissioner of political practices is not required or authorized to enforce this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [section 1].

Approved April 20, 2017

CHAPTER NO. 216

[HB 248]

AN ACT REVISING LAWS RELATED TO BULLYING IN SCHOOLS TO CLARIFY THAT THE REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES DOES NOT PRECLUDE CONTACTING LAW ENFORCEMENT IN RELATION TO INCIDENTS OF BULLYING; AMENDING SECTION 20-5-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-210, MCA, is amended to read:

“20-5-210. Enforcement – exhaustion of administrative remedies.

(1) A person alleging a violation of 20-5-207 through 20-5-210 may seek redress under any available law; ~~either civil or criminal~~; after exhausting all administrative remedies.

(2) *Nothing in this section precludes a person from contacting law enforcement in relation to incidents of bullying at any point in time.”*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2017

CHAPTER NO. 217

[HB 289]

AN ACT REVISING OUTFITTER’S ASSISTANT LAWS; REVISING RULEMAKING; REVISING DEFINITIONS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-325, AND 37-47-404, MCA; AND REPEALING SECTION 1, CHAPTER 136, LAWS OF 2015, AND SECTION 11, CHAPTER 241, LAWS OF 2013.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-101, MCA, is amended to read:

“37-47-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Accompany” means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) “Board” means the board of outfitters provided for in 2-15-1773.

(3) “Business entity” means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) “Consideration” means something of value given or done in exchange for something of value given or done by another.

(5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) “Emergency” means an unforeseen combination of circumstances or the resulting state that calls for immediate action.

(6)(7) “Guide” means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(7)(8) “License year” means the period indicated on the face of the license for which the license is valid.

(8)(9) “Net client hunter use” or “NCHU” means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter’s use of the federal land is not limited by some means other than NCHU.

(9)(10) “Outfitter” means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or outfitter’s assistant in accompanying that person.

(10)(11) “Outfitter’s assistant” means a person who is employed or retained by and directed by a licensed outfitter to perform the tasks of a guide, ~~but the~~ *when a guide’s license cannot be readily attained prior to or during the service of a participant due to an emergency. The person may not represent to the public that the person is an outfitter or guide.*

(11)(12) “Participant” means a person using the services offered by a licensed outfitter. (Terminates December 31, 2017--sec. 1, Ch. 136, L. 2015.)

37-47-101. (Effective January 1, 2018) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Accompany” means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) “Board” means the board of outfitters provided for in 2-15-1773.

(3) “Business entity” means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) “Consideration” means something of value given or done in exchange for something of value given or done by another.

(5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) “Guide” means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(7) “License year” means the period indicated on the face of the license for which the license is valid.

(8) “Net client hunter use” or “NCHU” means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter’s use of the federal land is not limited by some means other than NCHU.

(9) “Outfitter” means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal

service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide in accompanying that person.

(10) “Participant” means a person using the services offered by a licensed outfitter.”

Section 2. Section 37-47-201, MCA, is amended to read:

“37-47-201. (Temporary) Powers and duties of board relating to outfitters and guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards and guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter or guide. Qualifications for outfitters may include training, testing, experience, and knowledge of rules of governmental bodies pertaining to outfitting.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter or guide;

(c) rules specifying components and standards for review and approval of operations plans;

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report client names, outfitters and guides providing client services and the license numbers of those outfitters and guides, dates of client services, and private land acreage where licensed outfitters are authorized by the landowner to operate, including exclusive arrangements and lease agreements.

(e) rules specifying *what constitutes an emergency for which an outfitter’s assistant may be hired*, standards for outfitter’s assistants, *and* documentation standards for proof of employment or retention required of outfitter’s assistants. *The rules may also identify data that may be collected regarding use of outfitter’s assistants. must also identify data that may be collected regarding use of outfitter’s assistants.*

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due cause; and

(6) maintain records of net client hunter use. ~~(Terminates December 31, 2017--sec. 1, Ch. 136, L. 2015.)~~

37-47-201. (Effective January 1, 2018) Powers and duties of board relating to outfitters and guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards and guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter or guide. Qualifications for outfitters may include training, testing, experience, and knowledge of rules of governmental bodies pertaining to outfitting.

~~(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter or guide;~~

~~(c) rules specifying components and standards for review and approval of operations plans;~~

~~(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report client names, outfitters and guides providing client services and the license numbers of those outfitters and guides, dates of client services, and private land acreage where licensed outfitters are authorized by the landowner to operate, including exclusive arrangements and lease agreements;~~

~~(5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due cause; and~~

~~(6) maintain records of net client hunter use.”~~

Section 3. Section 37-47-325, MCA, is amended to read:

“37-47-325. (Temporary) Outfitter’s assistants – exemption from licensing. (1) An outfitter may hire or retain an outfitter’s assistant.

(2) An outfitter’s assistant is not required to obtain a license under this chapter.

(3) The outfitter’s assistant must carry proof of employment as provided in 37-47-404(4)(b) pending adoption of proof of employment required by the board by rule.

(4) (a) An outfitter who employs or retains an outfitter’s assistant is responsible for ensuring that the outfitter’s assistant:

(i) safeguards the public health, safety, and welfare while providing services; and

(ii) is qualified and competent to perform the tasks of a guide.

(b) The board shall hold an outfitter who employs or retains an outfitter’s assistant responsible under the provisions of 37-1-316, 37-47-341, and 37-47-402 for any acts or omissions by the outfitter’s assistant in the ordinary course and scope of duties assigned by the outfitter.

(5) The outfitter’s assistant may not be employed or retained by an outfitter for more than 15 days in a calendar year unless the outfitter’s assistant is actively obtaining a guide’s license pursuant to this part and the board determines that the license application is routine for purposes of 37-1-101.

(6) An outfitter may use more than one outfitter’s assistant in a calendar year.

(7) An outfitter’s assistant may be employed or retained by an outfitter on more than one occasion in a calendar year if:

(a) the outfitter’s assistant is not employed or retained for more than 15 days as an outfitter’s assistant in that calendar year; or

(b) the outfitter’s assistant is actively obtaining a guide’s license and the board determines that the license application is routine for purposes of 37-1-101. ~~(Terminates December 31, 2017--sec. 1, Ch. 136, L. 2015.)”~~

Section 4. Section 37-47-404, MCA, is amended to read:

“37-47-404. (Temporary) Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter, guide, or outfitter’s assistant is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, or outfitter’s assistant and the outfitter, guide, or outfitter’s assistant was not an active participant. An outfitter, guide, or outfitter’s assistant who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties

provided in this chapter. If a guide or outfitter's assistant violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual knowledge of an outfitter engaging the guide or outfitter's assistant, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, or outfitter's assistant shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or outfitter's assistant knows has been committed by the employees, contractors, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide, and a guide may not offer services unless the services are obtained through an endorsing outfitter.

(4) ~~(a) Except as provided in subsection (4)(b), an~~ An outfitter may not place a hired or retained outfitter's assistant in a position of providing services to participants until the outfitter has documentation as specified by board rule under 37-47-201(4)(e).

~~(b) (i) Prior to adoption of the rules, an outfitter may use temporary documentation to place a hired or retained outfitter's assistant in a position of providing services to participants. The temporary documentation must be mailed to the board within the time period of the outfitter's assistant's service, and a copy must be provided to the outfitter's assistant. The outfitter's assistant shall carry the temporary documentation at all times in the field.~~

~~(ii) The temporary documentation must include the following:~~

~~(A) the outfitter's name, license number, and contact information;~~

~~(B) the outfitter's assistant's name and home address and the starting date and expiration date for the period of service;~~

~~(C) a brief explanation of why an emergency replacement is needed; and~~

~~(D) the outfitter's signature, which must be on the original and on the copy of the temporary documentation and must affirm the provisions in this subsection (4)(b)(ii).~~

~~(iii) The outfitter shall collect the temporary documentation from the outfitter's assistant after the period of service.~~

~~(iv) The temporary documentation may not be used after adoption of the rules under 37-47-201(4)(e). (Terminates December 31, 2017--sec. 1, Ch. 136, L. 2015.)~~

37-47-404. (Effective January 1, 2018) Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter or guide is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter or guide and the outfitter or guide was not an active participant. An outfitter or guide who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this chapter. If a guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual knowledge of an outfitter engaging the guide, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter or guide shall report any violation or suspected violation of fish and game laws that the outfitter or guide knows has been committed by the employees, contractors, agents, representatives, clients, or participants in

~~the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.~~

~~(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide, and a guide may not offer services unless the services are obtained through an endorsing outfitter."~~

Section 5. Repealer. Section 1, Chapter 136, Laws of 2015, and section 11, Chapter 241, Laws of 2013, are repealed.

Approved April 20, 2017

CHAPTER NO. 218

[HB 298]

AN ACT INCREASING AWARENESS AND PREVENTION OF CHILD SEXUAL ABUSE; ENCOURAGING THE OFFICE OF PUBLIC INSTRUCTION TO DEVELOP AND MAKE AVAILABLE TO SCHOOL DISTRICTS POLICIES RELATED TO CHILD SEXUAL ABUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Child sexual abuse awareness and prevention. (1) The office of public instruction is encouraged to develop and maintain model school district policies and procedures for child sexual abuse awareness, prevention, response, and reporting.

(2) The office of public instruction shall make any model policies and procedures developed under subsection (1) available for voluntary adoption by school district trustees.

(3) Any model policies and procedures developed under subsection (1) may include the following topics:

- (a) basic principles of child sexual abuse prevention;
- (b) warning signs of a child who is being sexually abused;
- (c) actions that a child who is a victim of sexual abuse may take to obtain assistance;
- (d) counseling options;
- (e) educational support available for a child who is a victim of sexual abuse to enable the child to develop the child's full educational potential; and
- (f) response and reporting procedures.

Section 2. Implementation. The office of public instruction shall implement [this act] within existing resources.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 13, and the provisions of Title 20, chapter 7, part 13, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2017

CHAPTER NO. 219

[HB 328]

AN ACT REVISING MENTAL HEALTH CRISIS INTERVENTION AND JAIL DIVERSION GRANT PROCEDURES; ESTABLISHING PRIORITY FOR AWARDING OF GRANT FUNDS; ALLOWING TRIBAL GOVERNMENTS TO APPLY FOR GRANTS; ALLOWING FOR BIENNIAL GRANTS; AMENDING

SECTIONS 53-21-1202, 53-21-1203, AND 53-21-1204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-1202, MCA, is amended to read:

“53-21-1202. Crisis intervention programs – rulemaking authority.

(1) The department shall, subject to available appropriations for the purposes of this part, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties *and federally recognized tribal governments* in developing ~~county~~ plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(4)(j); and

(b) a targeted case management service authorized in 53-6-101(4)(n).

(4) The department shall adopt rules to:

(a) implement the grant program provided for in 53-21-1203;

(b) contract for detention beds pursuant to 53-21-1204; and

(c) pay for short-term inpatient treatment that is provided pursuant to 53-21-1205.”

Section 2. Section 53-21-1203, MCA, is amended to read:

“53-21-1203. State matching fund grants for county *and tribal government* crisis intervention, jail diversion, precommitment, and short-term inpatient treatment costs. (1) As soon as possible after July 1 of each ~~year~~ *new biennium*, from funds appropriated by the legislature for the purposes of this section, the department shall grant to each eligible county *or federally recognized tribal government* state matching funds for:

(a) jail diversion and crisis intervention services to implement 53-21-1201 and 53-21-1202;

(b) insurance coverage against catastrophic precommitment costs if a county insurance pool is established pursuant to 2-9-211; and

(c) short-term inpatient treatment.

(2) Grant amounts must be based on available funding and the prospects that a ~~county or multicounty~~ plan submitted pursuant to subsection (3) will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation and ultimately result in cost savings to the state. The department shall develop a sliding scale for state grants based upon the historical ~~county~~ use of the state hospital with a high-use ~~county applicant~~ receiving a lower percentage of matching funds. The sliding scale must be based upon the number of admissions by ~~county applicant~~ *region* compared to total admissions and upon the population ~~of each county of the applicant region~~ compared to the state population.

(3) In order to be eligible for the state matching funds, a county *or federally recognized tribal government* shall, in the time and manner prescribed by the department:

(a) apply for the funds and include in the grant application a detailed plan for how the ~~county applicant~~ and other local entities will collaborate and commit local funds for the mental health services listed in subsection (1);

(b) develop and submit to the department a ~~county or multicounty, tribal, or regional~~ jail diversion and crisis intervention services strategic plan pursuant to 53-21-1201 and 53-21-1202, including a plan for community-based

or regional emergency and court-ordered detention and examination services and short-term inpatient treatment;

(c) participate in a statewide or regional county insurance plan for precommitment costs under 53-21-132 if a statewide or regional insurance plan has been established as authorized under 2-9-211;

(d) participate in a statewide or regional jail suicide prevention program if one has been established by the department for the state or for the region in which the county applicant is situated; and

(e) collect and report data and information on county jail diversion, crisis intervention, and short-term inpatient treatment services in the form and manner prescribed by the department to support program evaluation and measure progress on performance goals.

~~(4) (a) For the biennium beginning July 1, 2015, money Money appropriated for the purposes of this section that exceeds the amount appropriated for this purpose in fiscal year 2015 must be used in the following order to:~~

~~(i) create crisis intervention or jail diversion services in areas of the state that currently lack services;~~

~~(ii) provide new crisis intervention or jail diversion services in areas of the state that have received state matching funds pursuant to this section for other purposes; or~~

~~(iii) recognize an increase in the demand for or use of services that have received funding in previous years.~~

~~(b) For the biennium beginning July 1, 2015, the If money from the appropriation remains after grants have been allocated as provided in subsection (4)(a), the department shall, at a minimum, maintain the level of state matching funds provided to counties that received matching funds in fiscal year 2015 if the counties request provide continued support of projects funded in the previous biennium with state matching fund grants if a county or tribal government requests continued funding of the services created or provided through use of the matching funds. If a county requests additional matching funds for continued funding of services provided through use of matching funds in previous years, the department shall consider whether the service is experiencing increased demand or use as provided in subsection (4)(a)(iii) and is eligible for increased funding. The department shall allocate funds provided pursuant to this subsection (4)(b) according to a formula adopted by the department by rule."~~

Section 3. Section 53-21-1204, MCA, is amended to read:

"53-21-1204. Department to contract for detention beds. (1) To the extent funding is appropriated for the purposes of this section, for each service area, as defined in 53-21-1001, the department shall contract with a mental health facility for psychiatric treatment beds that may be used for:

(a) inpatient crisis intervention services needed prior to an involuntary commitment petition being filed; and

(b) emergency detention under 53-21-129 and court-ordered detention under 53-21-124 after an involuntary commitment petition has been filed but before final disposition.

(2) Contracting pursuant to this section must take into consideration county strategic plans developed pursuant to 53-21-1201 and 53-21-1202 and local need for precommitment and short-term inpatient treatment services.

(3) Each contract must provide that for payment of costs for detention, evaluation, and treatment pursuant to subsection (1), the facility shall bill for payment of costs in the order of priority provided for under 53-21-132(2)(a).

(4) Each contract must require the collection and reporting of fiscal and program data in the time and manner prescribed by the department to support

program evaluation and measure progress on performance objectives. The department shall establish baseline data on emergency and court-ordered detention admissions to the state hospital from each county and analyze the effect of contracting under this section on state hospital admissions.”

Section 4. Effective date. [This act] is effective July 1, 2017.

Approved April 20, 2017

CHAPTER NO. 220

[HB 349]

AN ACT REVISING THE ESTABLISHMENT OF THE TENANT AND LANDLORD RELATIONSHIP WITH RESPECT TO RESIDENTIAL AND MOBILE HOME LOT RENTALS; REVISING THE EFFECTS OF FAILING TO SIGN A RENTAL AGREEMENT; AMENDING SECTIONS 70-24-204 AND 70-33-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-204, MCA, is amended to read:

“70-24-204. Effect of unsigned or undelivered rental agreement.

(1) If the landlord does not sign and deliver a written rental agreement *that has already been signed by the tenant* and delivered to the landlord ~~by the tenant~~, acceptance of rent ~~without reservation~~ *without reservation* by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord *to the tenant*.

(2) If the tenant does not sign and deliver *to the landlord* a written rental agreement *that has already been signed by the landlord* and delivered to the tenant ~~by the landlord~~, acceptance of possession of the premises and payment of rent ~~without reservation~~ *without reservation by the tenant* gives the rental agreement the same effect as if it had been signed and delivered by the tenant *to the landlord*.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.”

Section 2. Section 70-33-203, MCA, is amended to read:

“70-33-203. Effect of unsigned or undelivered rental agreement.

(1) If the landlord does not sign and deliver a written rental agreement *that has already been signed by the tenant* and delivered to the landlord ~~by the tenant~~, acceptance of rent ~~without reservation~~ *without reservation* by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord *to the tenant*.

(2) If the tenant does not sign and deliver *to the landlord* a written rental agreement *that has already been signed by the landlord* and delivered to the tenant ~~by the landlord~~, acceptance of possession of the premises and payment of rent ~~without reservation~~ *without reservation by the tenant* gives the rental agreement the same effect as if it had been signed and delivered by the tenant *to the landlord*.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.”

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to rental agreements entered into, extended, or renewed on or after [the effective date of this act].

Approved April 20, 2017

CHAPTER NO. 221

[HB 355]

AN ACT INCLUDING CERTAIN VEHICLES IN THE DEFINITION OF "SCHOOL BUS"; CLARIFYING LICENSE REQUIREMENTS FOR DRIVERS OF CERTAIN VEHICLES; ADDING A SCHOOL TRANSPORTATION REIMBURSEMENT FOR CERTAIN VEHICLES; REQUIRING A COST-EFFECTIVENESS ANALYSIS BEFORE THE PURCHASE OF CERTAIN VEHICLES; AMENDING SECTIONS 20-10-101, 20-10-103, AND 20-10-141, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-101, MCA, is amended to read:

"20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Bus route" means a route approved by the board of trustees of a school district and by the county transportation committee.

(2) "Eligible transportee" means a public school pupil who:

(a) is 5 years of age or older and has not reached the age of 21 on or before September 10 of the current school year or who is a preschool child with a disability between the ages of 3 and 6;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries:

(i) resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; or

(ii) has transportation identified as a related service in an individualized education program as developed and implemented in accordance with the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(d) is considered to reside with a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) "Passenger seating position" means, as defined in 49 CFR 571.222, the space on a school bus allocated for one passenger.

(4) (a) "School bus" means, except as provided in subsection (4)(b), any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the department of justice's semiannual inspection of school buses and the superintendent of public instruction; and:

(ii)(i) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school; or

(ii) is district-owned, is designed to carry 10 or fewer passengers, has an overall safety rating of five stars from the national highway traffic safety administration at the time of purchase, and is insured in accordance with minimum coverage requirements set forth in 20-10-109.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events

or to transport pupils to their homes in case of illness or other emergency situations *and that was purchased prior to [the effective date of this act]; or*

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

(5) "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between the pupil's legal residence or an officially designated bus stop and the school designated by the trustees for the pupil's attendance; or

(b) "individual transportation" by which a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(6) "Transportation service area" means the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program."

Section 2. Section 20-10-103, MCA, is amended to read:

"20-10-103. School bus driver qualifications. A driver of a school bus is qualified to drive a school bus if the driver:

(1) is not less than 18 years of age;

(2) is of good moral character;

(3) (a) is the holder of a commercial driver's license *to operate a school bus designed to carry more than 10 passengers; or*

(b) *is the holder of a Montana driver's license to operate a school bus designed to carry 10 or fewer passengers;*

(4) has filed with the district a satisfactory medical examination report, on a form approved by the United States department of transportation, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor. The issuance of the certificate is governed by rules established by the superintendent of public instruction, provided that the rules may suspend this requirement for a reasonable period of time if there has been an inadequate opportunity for securing the basic first aid course and certificate.

(6) has complied with any other qualifications established by the board of public education; and

(7) has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying compliance with the driver qualifications enumerated in this section."

Section 3. Section 20-10-141, MCA, is amended to read:

"20-10-141. Schedule of maximum reimbursement by mileage rates.

(1) The mileage rates in subsection (2) for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on bus routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation

of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) (a) The rate for each bus mile traveled must be determined in accordance with the following schedule:

(i) *50 cents for a school bus as defined in 20-10-101(4)(a)(ii);*

~~(i)~~(ii) 95 cents for a school bus with a rated capacity of not more than 49 passenger seating positions;

~~(ii)~~(iii) \$1.15 for a school bus with a rated capacity of 50 to 59 passenger seating positions;

~~(iii)~~(iv) \$1.36 for a school bus with a rated capacity of 60 to 69 passenger seating positions;

~~(iv)~~(v) \$1.57 for a school bus with a rated capacity of 70 to 79 passenger seating positions; and

~~(v)~~(vi) \$1.80 for a school bus with 80 or more passenger seating positions.

(b) Nonbus mileage, as provided in subsection (1), must be reimbursed at a rate of 50 cents a mile.

(3) The rated capacity is the number of passenger seating positions of a school bus as determined under the policy adopted by the board of public education. If modification of a school bus to accommodate pupils with disabilities reduces the rated capacity of the bus, the reimbursement to a district for pupil transportation is based on the rated capacity of the bus prior to modification.

(4) The number of pupils riding the school bus may not exceed the passenger seating positions of the bus.”

Section 4. Cost-effectiveness analysis required before purchase of small school bus. The trustees of a district may not purchase and operate a school bus as defined in 20-10-101(4)(a)(ii) until the trustees have:

(1) conducted an analysis of the costs associated with purchase and operation of the school bus compared to the costs associated with purchase or contract and operation of a school bus designed to carry more than 10 passengers; and

(2) adopted a written finding that the purchase and operation of a school bus as defined in 20-10-101(4)(a)(ii) is the most cost-effective means of transporting eligible transportees on the bus route or routes to which the school bus will be assigned.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 20, chapter 10, part 1, and the provisions of Title 20, chapter 10, part 1, apply to [section 4].

Section 6. Effective date. [This act] is effective July 1, 2017.

Approved April 20, 2017

CHAPTER NO. 222

[HB 402]

AN ACT CREATING THE SELF-STORAGE FACILITIES ACT; PROHIBITING RESIDENTIAL USE OF A SELF-STORAGE FACILITY; ALLOWING OPERATOR INSPECTIONS; PROVIDING FOR AN OPERATOR'S LIEN; PROVIDING FOR DEFAULT BY A RENTER AND SALE BY AN OPERATOR; PROVIDING FOR RENTER'S RIGHTS; PROVIDING DEFINITIONS; AND REPEALING SECTION 70-6-420, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] shall be cited as the “Self-Storage Facilities Act”.

Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) “Certified mail” means:

(a) a method of mailing that is offered by the United States postal service and provides evidence of mailing; or

(b) a method of mailing that is accompanied by a certificate of mailing executed by the individual who caused the notice to be mailed.

(2) “Commercially reasonable sale” means a sale that:

(a) is conducted at the self-storage facility, offsite at another location, or on a publicly accessible website that conducts lien sales; and

(b) is attended by at least three persons who appear personally or online, by telephone, or by any other method.

(3) “Default” means the failure to timely perform an obligation or duty set forth in a rental agreement.

(4) “Electronic mail” means an electronic message or an executable program or computer file that contains an image that is transmitted between two or more computers or electronic terminals. The term includes an electronic message that is transmitted within or between computer networks.

(5) “Emergency” means a sudden, unexpected occurrence or circumstance at or near a self-storage facility that requires immediate action to avoid injury to persons or property at or near the self-storage facility. The term includes but is not limited to flood or fire.

(6) “Last-known address” means the postal address or electronic mail address provided in a rental agreement, or the postal address or electronic mail address provided by the renter through subsequent written notice of a change of address.

(7) “Leased space” means the individual storage space at a self-storage facility that is rented to a renter pursuant to a rental agreement.

(8) “Operator” means the owner, operator, lessor, or sublessor of a self-storage facility or an agent or another person authorized to manage the facility or to receive rent from a renter under a rental agreement. The term does not include a warehouse operator if the warehouse operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.

(9) “Personal property” means movable property not affixed to land. Personal property includes but is not limited to goods, wares, merchandise, motor vehicles, and other titled or otherwise registered vehicles or property.

(10) “Property that has no commercial value” means property offered for sale in a commercially reasonable sale that receives no bid or offer.

(11) “Rental agreement” means a written agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-storage facility.

(12) “Renter” means a person entitled to the use of a leased space at a self-storage facility under a rental agreement or the person’s successors or assigns.

(13) “Self-storage facility” means a rented or leased real property consisting of individual storage spaces in which a renter customarily stores and removes personal property on a self-service basis.

Section 3. Self-storage use – residential prohibition. (1) An operator may not knowingly permit a leased space at a self-storage facility to be used for residential purposes.

(2) A renter may not use a leased space for residential purposes.

Section 4. Operator inspection – repair – emergency. (1) An operator must notify the renter by telephone or electronic mail 3 days before entering a leased space for the purpose of inspection or repair. An operator shall disclose to the renter the nature of the inspection or repair.

(2) If an emergency occurs, an operator may enter a leased space for inspection or repair without notice to or consent from the renter. An operator who enters a leased space in the event of an emergency shall notify the renter within 48 hours after the incident:

- (a) that the operator entered the leased space; and
- (b) of the nature of the emergency.

(3) An operator shall maintain a record of instances of entering a leased space for inspection, repair, or emergency.

Section 5. Renter's personal property – operator's lien – rental agreement – value of contents. (1) The operator of a self-storage facility shall have a lien on all of a renter's personal property located at the self-storage facility for rent, late fees, legal fees, labor, or other charges incurred pursuant to a rental agreement and for expenses incurred for preservation, sale, or disposition of the personal property. The lien established by this subsection has priority over all other liens except for liens that have been perfected and recorded on such personal property and tax liens.

(2) The lien in subsection (1) attaches on the date that the personal property is placed in a leased space.

(3) The rental agreement must contain a statement advising the renter:

- (a) of the existence of the lien; and
- (b) that personal property stored in the leased space may be sold to satisfy the lien if the renter is in default.

(4) If the rental agreement specifies a limit on the value of personal property that the renter may store in the leased space, the limit must be deemed to be the maximum value of the personal property in the renter's leased space.

Section 6. Renter default – access restriction. (1) If the rent or other charges due from the renter are delinquent and unpaid, the operator has the right to deny the renter access to the leased space at the self-storage facility.

(2) A reasonable late fee may be imposed and collected by an operator for each period that a renter does not pay rent or other charges when due under the rental agreement, if the amount of the late fee and the conditions for imposing the fee are stated in the rental agreement or in an addendum to that agreement. A late fee of \$20 or 20% of the monthly rent, whichever is greater, is a reasonable fee and may not be considered a penalty. Any reasonable expense incurred as a result of rent collection or lien enforcement by an operator may be charged to the renter in addition to late fees.

(3) A renter who purposely or knowingly accesses a leased space after having been in default of the rental agreement and denied access under [section 7] and subsection (1) of this section may be prosecuted under Title 45, chapter 6.

Section 7. Renter default – personal property sale. (1) If a renter is in default for a period of more than 60 days, the operator may enforce the lien provided in [section 5] by selling the renter's stored personal property at a commercially reasonable sale. Personal property may be sold:

- (a) as a unit or in parcels; or
- (b) by way of one or more contracts.

(2) The operator may otherwise dispose of property that has no commercial value.

(3) Before conducting a sale under this section, the operator shall:

(a) at least 30 days before the sale, send notice of default to the renter. The notice of default must include:

(i) a statement that the contents of the renter's leased space are subject to the operator's lien;

(ii) a statement of the operator's claim, indicating the charges due on the date of the notice and that additional charges shall continue to accrue and become due;

(iii) a demand for payment of the charges due and a deadline for payment;

(iv) a statement that unless the claim is paid before the deadline, the contents of the renter's leased space will be sold or otherwise disposed of after a specified time; and

(v) the name, street address, and telephone number of the operator or a designated agent that the renter may contact to respond to the notice.

(b) at least 7 days before the sale, notify by mail and electronic mail, if provided by the renter, the date, time, and location of the sale;

(c) at least 7 days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the county where the sale is to be held. Alternatively, the operator may advertise the sale in any other commercially reasonable manner. The manner of advertisement is commercially reasonable if the sale is attended by at least three persons who appear personally or online, by telephone, or by any other method at the time and place advertised.

(4) If the personal property subject to the operator's lien is titled, registered, or owned by public record and if charges and rent remain unpaid for 60 days, the operator may have the personal property removed from the self-storage facility by a professional transfer or tow truck company, including but not limited to motor vehicles, watercraft, aircraft, and trailers. The operator is not liable for any damage to personal property under this subsection after the professional transfer or tow truck company takes possession of the property.

(5) At any time before a sale is held under this section or before a vehicle, watercraft, aircraft, or trailer is removed under this section, the renter may pay the amount necessary to satisfy the lien and access the renter's personal property.

(6) If a sale is held under this section, the operator shall:

(a) satisfy the lien with the proceeds of the sale; and

(b) send a check of the net proceeds to the renter at the renter's last known address or to any other recorded lienholder. The operator is not liable to any party for excess proceeds paid to the renter. If the check has not been cashed after 1 year, any remaining proceeds are considered abandoned property and must be reported and paid to the department of revenue in accordance with the Uniform Unclaimed Property Act in Title 70, chapter 9, part 8.

(7) A purchaser in good faith of any personal property sold pursuant to this section to satisfy the lien granted in [section 5] takes the property free and clear of any rights of persons against whom the lien was valid.

(8) Notices to the renter under subsection (3) must be sent to the renter's last-known address by United States certified mail, standard mail, and electronic mail, if provided by the renter. Notices sent by standard mail are considered delivered when postmarked by the United States postal service, properly addressed with postage paid. Notices sent by electronic mail are considered delivered on the date the electronic message is sent to the last-known address provided by the renter.

(9) If the operator complies with the requirements of this section, the operator's liability:

(a) to the renter shall be limited to the net proceeds received from the sale of the renter's personal property until the proceeds escheat to the state according to subsection (6)(b); and

(b) to other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by the other lienholder's lien property until the proceeds escheat to the state according to subsection (6)(b).

Section 8. Renter's rights. Unless the rental agreement specifically provides otherwise and until a lien sale under [section 7], the exclusive care, custody, and control of all personal property stored in a leased space remains vested in the renter.

Section 9. Rights of parties – rental agreements – compliance with servicemembers civil relief act. (1) [Sections 1 through 8] do not impair the power of the parties to a rental agreement to create rights, duties, or obligations that do not arise from [sections 1 through 8]. The rights provided to an operator by [sections 1 through 8] are in addition to all other rights provided by law to a creditor against a debtor.

(2) If the rental agreement is with a service member, the operator shall comply with all terms of the Servicemembers Civil Relief Act, 50 U.S.C. 501, et seq.

Section 10. Repealer. The following section of the Montana Code Annotated is repealed:

70-6-420. Default in payment of storage space rental fees -- notice -- sale of contents.

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 1 through 9].

Approved April 20, 2017

CHAPTER NO. 223

[HB 427]

AN ACT PROVIDING THAT A REAL PROPERTY OWNER IS NOT LIABLE FOR DAMAGES OR INJURY RESULTING FROM ACTS OR OMISSIONS BY A VOLUNTEER FIREFIGHTER WHILE ENGAGED IN FIRE SUPPRESSION ACTIVITIES ON THE OWNER'S PROPERTY; AND AMENDING SECTION 7-33-2208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2208, MCA, is amended to read:

“7-33-2208. Fire control powers – liability. (1) Any county rural fire chief, district rural fire chief or deputy, or fire service area or fire company fire chief or deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

(2) A chief or deputy and the county, rural district, fire company, or fire service area are immune from suit for injury to persons or property resulting from actions taken to suppress fires under 10-3-209 or this section. An entity or individual listed in this section is also immune from suit for injury to persons or property resulting from a determination not to provide assistance requested pursuant to 10-3-209.

(3) *An owner of real property is not liable for damages or injury resulting from acts or omissions by a volunteer firefighter of a rural fire district, fire*

service area, or fire company while the firefighter is engaged in fire suppression activities on the owner's property."

Approved April 20, 2017

CHAPTER NO. 224

[HB 456]

AN ACT CLARIFYING TIMELINES FOR SUBDIVISION REVIEW; AMENDING SECTION 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application – land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104(6)(k) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 *calendar* days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 *calendar* days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 *calendar* days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 *calendar* days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 *calendar* days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed

subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in 76-3-201;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to applications submitted on or after [the effective date of this act].

Approved April 20, 2017

CHAPTER NO. 225

[HB 476]

AN ACT REVISING LAWS CONCERNING THE SUPERVISION OF MEDICAL ASSISTANTS; PROVIDING FOR PHYSICIAN ASSISTANT SUPERVISION OF MEDICAL ASSISTANTS; EXPANDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-3-102 AND 37-3-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-102, MCA, is amended to read:

"37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "ACGME" means the accreditation council for graduate medical education.

(2) "AOA" means the American osteopathic association.

(3) "Approved internship" means an internship training program of at least 1 year in a program that either is approved for intern training by the AOA or conforms to the standards for intern training established by the ACGME or successors. However, the board may, upon investigation, approve any other internship.

(4) "Approved medical school" means a school that either is accredited by the AOA or conforms to the education standards established by the LCME or the world health organization or successors for medical schools that meet standards established by the board by rule.

(5) "Approved residency" means a residency training program conforming to the standards for residency training established by the ACGME or successors or approved for residency training by the AOA.

(6) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "ECP" means an emergency care provider licensed by the board, including but not limited to an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic.

(9) "LCME" means the liaison committee on medical education.

(10) "Medical assistant" means an unlicensed allied health care worker who functions under the supervision of a physician, *physician assistant*, or podiatrist in a physician's or podiatrist's office and who performs administrative and clinical tasks.

(11) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

(12) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities, including electronic and technological means such as telemedicine. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter.

(13) (a) "Telemedicine" means the practice of medicine using interactive electronic communications, information technology, or other means between a licensee in one location and a patient in another location with or without an intervening health care provider. Telemedicine typically involves the application of secure videoconferencing or store-and-forward technology, as defined in 33-22-138.

(b) The term does not mean an audio-only telephone conversation, an e-mail or instant messaging conversation, or a message sent by facsimile transmission."

Section 2. Section 37-3-104, MCA, is amended to read:

"37-3-104. Medical assistants – guidelines. (1) The board shall adopt guidelines by administrative rule for:

(a) the performance of administrative and clinical tasks by a medical assistant that are allowed to be delegated by a physician, *physician assistant*, or podiatrist, including the administration of medications; and

(b) the level of physician, *physician assistant*, or podiatrist supervision required for a medical assistant when performing specified administrative

and clinical tasks delegated by a physician, *physician assistant*, or podiatrist. However, the board shall adopt a rule requiring onsite supervision of a medical assistant by a physician, *physician assistant*, or podiatrist for invasive procedures, administration of medication, or allergy testing.

(2) The physician, *physician assistant*, or podiatrist who is supervising the medical assistant is responsible for:

(a) ensuring that the medical assistant is competent to perform clinical tasks and meets the requirements of the guidelines;

(b) ensuring that the performance of the clinical tasks by the medical assistant is in accordance with the board's guidelines and good medical practice; and

(c) ensuring minimum educational requirements for the medical assistant.

(3) The board may hold the supervising physician, *physician assistant*, or podiatrist responsible in accordance with 37-1-410 or 37-3-323 for any acts of or omissions by the medical assistant acting in the ordinary course and scope of the assigned duties."

Approved April 20, 2017

CHAPTER NO. 226

[HB 482]

AN ACT REVISING INCEST LAWS; PROVIDING THAT CONSENT IS INEFFECTIVE IF THE STEPSON OR STEPDAUGHTER WHO IS THE VICTIM IS LESS THAN 18 YEARS OF AGE AND THE STEPPARENT IS 4 OR MORE YEARS OLDER; PROVIDING THAT A PERSON WHO IS LESS THAN 18 YEARS OF AGE IS NOT LEGALLY RESPONSIBLE OR LEGALLY ACCOUNTABLE FOR THE OFFENSE OF INCEST; AND AMENDING SECTION 45-5-507, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) (a) Consent is a defense ~~under this section~~ to incest with or upon a stepson or stepdaughter, but consent is ineffective if the ~~victim~~ *stepson or stepdaughter* is less than 18 years ~~old~~ *of age and the stepparent is 4 or more years older than the stepson or stepdaughter.*

(b) *A person who is less than 18 years of age is not legally responsible or legally accountable for the offense of incest and is considered a victim of the offense of incest if the other person in the incestuous relationship is 4 or more years older than the victim.*

(3) Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed \$50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life

imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(6) In addition to any sentence imposed under subsection (3), (4), or (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 2. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 20, 2017

CHAPTER NO. 227

[HB 492]

AN ACT REVISING LAWS GOVERNING CONSOLIDATION OF FIRE DISTRICTS AND FIRE SERVICE AREAS; PROVIDING FOR CONSOLIDATION OF A FIRE DISTRICT AND FIRE SERVICE AREA TO CREATE A NEW FIRE SERVICE AREA; AND AMENDING SECTIONS 7-33-2120 AND 7-33-2401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2120, MCA, is amended to read:

"7-33-2120. Consolidation of fire districts and fire service areas – mill levy limitations. (1) Two or more rural fire districts or rural fire districts and fire service areas established pursuant to 7-33-2401 may consolidate to form a single rural fire district *or fire service area* upon an affirmative vote of each consolidating rural fire district's or fire service area's governing board.

(2) (a) At the time they vote to consolidate, the governing boards shall also adopt a consolidation plan. The plan must contain:

(i) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the new rural fire district *or fire service area* under subsection (4);

(ii) the name of the new rural fire district *or fire service area*;

(iii) a boundary map of the new rural fire district *or fire service area*; and

(iv) the estimated financial impact of consolidation on the average taxpayer within the proposed district *or area*.

(b) The consolidation plan must state if the consolidation is to be made with or without the mutual assumption of the warrant or bonded indebtedness of each district or fire service area. Without agreement among the governing boards on the assumption of warrant or bonded indebtedness, the consolidation may not occur.

(3) (a) Within 14 days of the date that the governing boards vote to consolidate, notice of the consolidation must be:

(i) published as provided in 7-1-2121 or as provided in 7-1-4127 if ~~the~~ *a* district *involved in the consolidation* or part of the district is in an incorporated third-class city or town in each county in which any part of ~~the~~ *a* consolidated fire district will be located; and

(ii) mailed as provided in 7-1-2122 or as provided in 7-1-4129 if ~~the~~ *proposed a* district *involved in the consolidation* or part of the district is in an incorporated third-class city or town to each registered voter and real property owner residing in ~~the~~ *a* proposed new district.

(b) A public hearing on the consolidation must be held within 14 days of the first publication and mailing of notice. The hearing must be held before the joint governing boards at a time and place set forth in the notice.

(4) Real property owners in each affected rural fire district or fire service area may submit written protests opposing consolidation to the governing board of their district or fire service area. If within 30 days of the first publication of notice the owners of 40% or more of the real property in an existing district or fire service area and owners of property representing 40% or more of the taxable value of property in an existing district or fire service area protest the consolidation, it is void.

(5) After consolidation, the former rural fire districts and fire service areas constitute a single rural fire district *or fire service area* governed under the provisions of 7-33-2104 through 7-33-2106 *or under the provisions of part 24 of this chapter*.

(6) (a) Subject to the provisions of subsections (6)(b) and (6)(c), *when* the consolidation of two or more rural fire districts or rural fire districts and fire service areas pursuant to this section results in the creation of a *new* rural fire district, *it must be considered to be a new rural fire district* for the purposes of determining mill levy limitations.

(b) The mill levy authority under 15-10-420 for each former rural fire district that is consolidated under this section must be aggregated to establish the base mill levy authority for the new district in the year following consolidation.

(c) If the electors of a former rural fire district have approved mill levy authority for the district in excess of the limit established in 15-10-420 pursuant to an election held under 15-10-425, the authority applies to the new district under the limitations established by the electors.

(7) For the purposes of this section, "governing board" means the board of trustees of a rural fire district or fire service area or a board of county commissioners that governs a fire service area as provided in 7-33-2403(1)(a)."

Section 2. Section 7-33-2401, MCA, is amended to read:

"7-33-2401. Fire service area -- establishment -- alteration -- dissolution. (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, kinds, types, or levels of service, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, change the kinds, types, or levels of service, or change the manner in which the area will provide services to its residents.

(4) (a) The board of county commissioners may alter the boundaries or the kinds, types, or levels of service or dissolve a fire service area, using the procedures provided in subsection (2). The board of county commissioners shall alter the boundaries of a fire service area to exclude any area that is annexed by a city or town, using the procedures provided in subsection (2). Except as provided in 7-33-2120(2)(b), any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area.

(b) A fire service area that consolidates with a rural fire district as provided in 7-33-2120 *to form a new rural fire district* is considered to be dissolved. *A new fire service area formed by consolidating a rural fire district and a fire service area is subject to the provisions of this part.*

Approved April 20, 2017

CHAPTER NO. 228

[HB 537]

AN ACT REVISING THE UNIFORM PROBATE CODE; PROVIDING THAT PROVISIONS REGARDING THE REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE APPLY TO TESTATE AND INTESTATE ESTATES; AND AMENDING SECTION 72-2-814, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-2-814, MCA, is amended to read:

“72-2-814. Revocation of probate and nonprobate transfers by divorce – no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) “Disposition or appointment of property” includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) “Divorce or annulment” means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that

does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a

former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(9) *The provisions of this section apply to testate and intestate estates, and in the event of a conflict between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this title, the provisions of this section shall control. This subsection does not apply if a divorced individual designates a former spouse as personal representative of the estate subsequent to the divorce.*

Approved April 20, 2017

CHAPTER NO. 229

[SB 319]

AN ACT PROHIBITING A STATE AGENCY OR LOCAL GOVERNMENT FROM PROHIBITING AN INDIVIDUAL FROM WEARING TRADITIONAL TRIBAL REGALIA OR OBJECTS OF CULTURAL SIGNIFICANCE AT CERTAIN PUBLIC EVENTS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tribal regalia and objects of cultural significance – allowed at public events. (1) The purpose of this section is to help further the state's recognition of the distinct and unique cultural heritage of the American Indians and the state's commitment to preserving the American Indians' cultural integrity as provided in Article X, section 1(2), of the Montana constitution.

(2) A state agency or a local government may not prohibit an individual from wearing traditional tribal regalia or objects of cultural significance at a public event.

(3) For purposes of this section, the following definitions apply:

(a) "Individual" means a human being regardless of age.

(b) "Local government" has the meaning provided in 2-2-102.

(c) "Public event" means an event held or sponsored by a state agency or a local government, including but not limited to an award ceremony, a graduation ceremony, or a public meeting.

(d) "State agency" has the meaning provided in 1-2-116.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, and the provisions of Title 2 apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2017

CHAPTER NO. 230

[HB 251]

AN ACT REMOVING CERTAIN WEAPONS FROM THE LIST OF WEAPONS IN CONCEALED WEAPONS LAWS; REVISING THE DEFINITION OF "CONCEALED WEAPON"; AND AMENDING SECTIONS 45-8-315 AND 45-8-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-315, MCA, is amended to read:

"45-8-315. Definition. "Concealed weapon" means any ~~weapon mentioned in 45-8-316 through 45-8-318 and 45-8-321 through 45-8-328~~ a *firearm* that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, ~~except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon.~~"

Section 2. Section 45-8-316, MCA, is amended to read:

"45-8-316. Carrying concealed weapons firearms. (1) A person who carries or bears concealed upon the individual's person a ~~dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, firearm or other deadly weapon~~ shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon the individual's person ~~any of the weapons described in subsection (1)~~ a *firearm* shall be punished by a fine not exceeding \$1,000 or be imprisoned in the state prison for a period not exceeding 5 years, or both."

Approved April 20, 2017

CHAPTER NO. 231

[SB 44]

AN ACT ESTABLISHING HOLD HARMLESS REQUIREMENTS FOR PATIENTS AND DISPUTE RESOLUTION PROCESSES FOR AIR AMBULANCE PROVIDERS AND INSURERS; PROVIDING DISCLOSURES BY AIR AMBULANCE SERVICES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-25-1403, 33-30-102, 33-31-111, AND 33-35-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings and purpose. (1) The legislature finds that:

(a) air ambulance services provide a necessary, and sometimes lifesaving, means of transporting Montanans experiencing health emergencies;

(b) Montanans desire adequate access to air ambulance services;

(c) in many cases the high charges assessed by out-of-network air ambulance services and limited insurer and health plan reimbursements have resulted in Montanans incurring excessive out-of-pocket expenses; and

(d) the federal Airline Deregulation Act preempts states from enacting any law related to a price, route, or service of an air carrier, which is interpreted as applying to air ambulance services.

(2) The purpose of [sections 1 through 6] is to prevent Montanans from incurring excessive out-of-pocket expenses in out-of-network air ambulance situations in a manner that is not preempted by the Airline Deregulation Act.

Section 2. Hold harmless. (1) If a covered person receives services from a non-Montana hospital-controlled out-of-network air ambulance service for an emergency medical condition, an insurer or health plan shall assume the covered person's responsibility, if any, for amounts charged in excess of allowed amounts for covered services and supplies, applicable copayments, coinsurance, and deductibles.

(2) An insurer or health plan that assumes a responsibility pursuant to subsection (1) shall notify the air ambulance service of that assumption no later than the date the insurer or health plan issues payment under subsection (4).

(3) If an air ambulance service receives notice pursuant to subsection (2), with the exception of amounts owed for applicable copayments, coinsurance, and deductibles, the air ambulance service may not:

(a) bill, collect, or attempt to collect from the covered person for the responsibility assumed under subsection (1);

(b) report to a consumer reporting agency that the covered person is delinquent on the responsibility assumed under subsection (1); or

(c) obtain a lien on the covered person's property in connection with the responsibility assumed under subsection (1).

(4) (a) An insurer or health plan is responsible for payment or denial of a claim within 30 days after receipt of a proof of loss, except as provided in 33-18-232(1). Within the timeframe provided in this subsection (4)(a), the insurer or health plan shall notify the covered person of the amount of deductible, coinsurance, or copayment that is the covered person's responsibility to pay.

(b) The insurer or health plan responsible under subsection (1) shall make payment based on:

(i) the billed charges of the air ambulance service;

(ii) another amount negotiated with the air ambulance service; or

(iii) the median amount the insurer or health plan would pay to an in-network air ambulance service for the services performed.

(5) If after payment is made under subsection (4) the insurer or health plan and air ambulance service dispute whether any further payment obligation exists, the insurer or health plan and air ambulance service shall enter into the dispute resolution process set forth in [sections 4 through 6]. After the independent dispute resolution process is exhausted, the aggrieved party may pursue any available remedies in a court of competent jurisdiction.

(6) For the purposes of this section:

(a) “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a person who possesses knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

(i) placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part; and

(b) “insurer” means a health insurance issuer as defined in 33-22-140 and includes issuers of health insurance under Titles 2 and 20.

(7) [Sections 1 through 6] do not apply if a covered person used an air ambulance membership subscription, as provided in 50-6-320, for the services provided by the air ambulance service.

Section 3. Disclosures by air ambulance service. An out-of-network nonhospital-controlled air ambulance service must disclose by July 1 of each year any relationships or financial arrangements with health care providers, insurers, or health plans. This includes but is not limited to employment arrangements, ownership interests, first call agreements, and board memberships. This information must be filed with the department of public health and human services and also posted prominently on the commissioner of insurance’s website. The air ambulance service must ensure the continued accuracy of this information throughout the year by submitting written updates within 5 days of any changes to the information.

Section 4. Independent dispute resolution. (1) If an insurer or health plan and air ambulance service enter into dispute resolution, the procedure in [section 5] is to be used to determine the fair market price of the services that are the subject of the claim.

(2) Payment of the fair market price calculated pursuant to [section 5] constitutes payment in full of the claim.

(3) A determination under this section is not binding on the insurer or health plan and the air ambulance service.

(4) Unless otherwise agreed to by the parties, each party shall:

(a) bear its own attorney fees and costs incurred under the procedure provided in [section 5]; and

(b) equally bear all fees and costs of the independent reviewer.

(5) As used in this section, “fair market price” means the value of the services provided as determined by the independent reviewer based on the factors provided in [section 5(6)].

Section 5. Independent dispute resolution procedure – exemptions.

(1) To initiate a dispute resolution procedure under [sections 1 through 6], the parties shall file a written notice of dispute with the insurance commissioner.

(2) Except as provided in subsection (3), within 30 days after the date of receipt of the notice of dispute, and if no independent reviewer is mutually agreed to by the insurer or health plan and air ambulance service under subsection (3), the insurance commissioner shall appoint an independent reviewer having the qualifications listed in [section 6]. The insurance commissioner shall select an independent reviewer randomly from a list established under [section 6].

(3) The insurer or health plan and air ambulance provider may by mutual agreement select an independent reviewer. The parties shall notify the insurance commissioner of the mutually agreed independent reviewer prior to the appointment of an independent reviewer under subsection (2).

(4) An independent reviewer's sole substantive determination under this part is the fair market price of the services that are the subject of the claim.

(5) The independent reviewer may make procedural rulings necessary to regulate the proceedings.

(6) The factors to be used in the independent reviewer's determination are:

(a) the training, qualifications, and composition of the air ambulance service personnel;

(b) the fees for rotor wing or fixed wing services originating or provided entirely within the state of Montana that are:

(i) usually charged by the air ambulance service in Montana;

(ii) usually accepted as payment in full by the air ambulance service in Montana;

(iii) usually charged by other air ambulance services doing business in Montana;

(iv) usually accepted as payment in full by other air ambulance services doing business in Montana; and (v) usually paid by the insurer or health plan for the service provided in Montana;

(c) whether the air ambulance service was provided in a rural or urban context;

(d) the applicable medicare rate of payment for the services that are the subject of the claim; and

(e) any other factors the independent reviewer determines to be relevant in determining fair market price in accordance with established precedent.

(7) Participation in a dispute resolution procedure under [sections 4 through 6] exempts an insurer from 33-18-201(6) and (8) and 33-18-232(2).

Section 6. Insurance commissioner duties – independent reviewer qualifications. (1) The insurance commissioner shall:

(a) approve any independent reviewer that is eligible to adjudicate disputes under [sections 1 through 6];

(b) maintain a list of independent reviewers eligible to adjudicate disputes under [sections 1 through 6];

(c) terminate approval of an independent reviewer and remove the independent reviewer from the list of approved independent reviewers upon determining that an independent reviewer no longer meets the requirements to adjudicate disputes; and

(d) adopt rules necessary to implement [sections 1 through 6], including rules regarding discovery and other procedures regarding the dispute resolution process and eligibility of an independent reviewer.

(2) An individual is eligible to be an independent reviewer under [sections 1 through 6] if the individual is knowledgeable and experienced in applicable principles of contract and insurance law.

(3) In approving an individual as an independent reviewer, the insurance commissioner shall ensure that the individual does not have a conflict of interest that would adversely impact the individual's independence and

impartiality in rendering a decision in an independent dispute resolution procedure under [sections 4 and 5]. A conflict of interest includes but is not limited to an ownership or direct familial interest in an insurer, a health care provider, or an air ambulance service that may be involved in an independent dispute resolution procedure under [sections 4 and 5].

(4) In approving an individual as an independent reviewer, the insurance commissioner may not approve an individual who is currently serving in any matter as a hearing officer for the commissioner.

Section 7. Section 20-25-1403, MCA, is amended to read:

“20-25-1403. (Temporary) Authorization to establish self-insured health plan for students – requirements – exemption. (1) The commissioner may establish a self-insured student health plan for enrolled students of the system and their dependents, including students of a community college district. In developing a self-insured student health plan, the commissioner shall:

- (a) maintain the plan on an actuarially sound basis;
- (b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the plan; and
- (c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the plan. The deposits must be expended for claims under the plan and for the costs of administering the plan, including but not limited to the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary reinsurance, and repaying debts.

(2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult with affected parties, including but not limited to the board of regents and representatives of enrolled students of the system.

(3) A self-insured student health plan developed under this part is not responsible for and may not cover any services or pay any expenses for which payment has been made or is due under an automobile, premises, or other private or public medical payment coverage plan or provision or under a workers' compensation plan or program, except when the other payor is required by federal law to be a payor of last resort. The term “services” includes but is not limited to all medical services, procedures, supplies, medications, or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

(4) *The provisions of [sections 1 through 6] apply to any self-insured student health plan developed under this part.*

(4)(5) Except for the provisions of Title 33, chapter 40, part 1, the provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part. (Terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)

20-25-1403. (Effective January 1, 2018) Authorization to establish self-insured health plan for students – requirements – exemption. (1) The commissioner may establish a self-insured student health plan for enrolled students of the system and their dependents, including students of a community college district. In developing a self-insured student health plan, the commissioner shall:

- (a) maintain the plan on an actuarially sound basis;
- (b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the plan; and
- (c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the plan. The deposits must be expended for claims under the plan and for the costs of administering the plan, including but not limited to the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary reinsurance, and repaying debts.

(2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult with affected parties, including but not limited to the board of regents and representatives of enrolled students of the system.

(3) A self-insured student health plan developed under this part is not responsible for and may not cover any services or pay any expenses for which payment has been made or is due under an automobile, premises, or other private or public medical payment coverage plan or provision or under a workers' compensation plan or program, except when the other payor is required by federal law to be a payor of last resort. The term "services" includes but is not limited to all medical services, procedures, supplies, medications, or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

(4) *The provisions of [sections 1 through 6] apply to any self-insured student health plan developed under this part.*

~~(4)~~(5) The provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part."

Section 8. Section 33-30-102, MCA, is amended to read:

"33-30-102. Application of this chapter – construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; *[sections 1 through 6]*; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, 22, and 32, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

Section 9. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws.

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, [sections 1 through 6], 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, 33-22-706, Title 33, chapter 32[, and Title 33, chapter 40, part 1,] apply to health maintenance organizations. (Bracketed language in (7) terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)”

Section 10. Section 33-35-306, MCA, is amended to read:

“33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) [sections 1 through 6];

~~(d)~~(e) 33-3-308;

~~(e)~~(f) Title 33, chapter 18, except 33-18-242;

~~(f)~~(g) Title 33, chapter 19;

~~(g)~~(h) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153;

~~(h)~~(i) 33-22-512, 33-22-515, 33-22-525, and 33-22-526; and

~~(i)~~(j) Title 33, chapter 40, part 1.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked. (Subsection (1)(i) terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)”

Section 11. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 2, chapter 18, part 7, and the provisions of Title 2, chapter 18, part 7, apply to [sections 1 through 6].

(2) [Sections 1 through 6] are intended to be codified as an integral part of Title 20, chapter 25, part 13, and the provisions of Title 20, chapter 25, part 13, apply to [sections 1 through 6].

(3) [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 6].

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. Effective date. [This act] is effective on passage and approval.

Section 14. Applicability. [This act] applies to all air ambulance transports that occur on or after [the effective date of this act].

Approved April 25, 2017

CHAPTER NO. 232

[HB 37]

AN ACT REVISING THE MONTANA INDIAN LANGUAGE PRESERVATION PROGRAM; EXTENDING THE PROGRAM; ALLOWING FOR PRESERVATION OF SUNG LANGUAGE; ALLOWING STATE FUNDS TO BE USED AS MATCHING FUNDS; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-9-537, MCA, SECTION 7, CHAPTER 410, LAWS OF 2013, SECTION 3, CHAPTER 426, LAWS OF 2015, AND SECTION 7, CHAPTER 426, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-537, MCA, is amended to read:

“20-9-537. (Temporary) Montana Indian language preservation program. (1) There is a Montana Indian language preservation program. The program is established to support efforts of Montana tribes to preserve and perpetuate Indian languages in the form of spoken, written, *sung*, or *sign signed* language and to assist in the preservation and curricular goals of Indian education for all pursuant to Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) (a) The state-tribal economic development commission established in 90-1-131 shall administer the program and, in collaboration with the Montana historical society, the state director of Indian affairs, and each tribal government located on the seven Montana reservations and the Little Shell Chippewa tribe, shall create program guidelines.

(b) The program guidelines must address performance and output standards, distribution of funds, accounting of funds, and use of funds.

(c) The performance and output standards must include:

(i) development of audio and visual recordings;

(ii) creation of reference materials, which may be in audio, visual, electronic, or written format;

(iii) creation and publication of curricula, which may include electronic curricula; and

(iv) ~~development~~ *administration* and maintenance of a long-term language preservation strategic plan.

(d) The performance and output standards may include:

(i) language classes;

(ii) language immersion camps;

(iii) storytelling;

(iv) publication of literature; and

(v) language programs, workshops, seminars, camps, and other presentations in formal or informal settings.

(3) ~~By December 15, 2016, any~~ *Any* tangible goods produced under this section must be submitted *within 1 year of production* to the Montana historical society for the benefit of related language preservation efforts and for preservation and archival purposes.

(4) Tribal governments or their designees receiving program funds may form local program advisory boards. Members of a local program advisory

board may include but are not limited to representatives from any of the entities listed in subsection (6).

(5) (a) Each tribal government or designee shall provide reports on expenditures of grant funds, overall program progress, and other criteria required under the guidelines established pursuant to subsection (2)(a) to the state-tribal economic development commission.

(b) The state-tribal economic development commission shall report any findings, comments, or recommendations regarding each local program and the Montana Indian language preservation program to the legislature as provided in 5-11-210.

(6) Tribal governments and their designees are encouraged to maximize the impact of grant funds by forming partnerships among state and tribal entities and leveraging existing resources for the preservation of Indian languages and the education of all Montanans in a way that honors the cultural integrity of American Indians. Suggested partner entities include but are not limited to:

- (a) the governor's office of Indian affairs;
- (b) school districts located on reservations;
- (c) tribal colleges;
- (d) tribal historic preservation offices;
- (e) tribal language and cultural programs;
- (f) units of the Montana university system;
- (g) the Montana historical society;
- (h) the office of public instruction;
- (i) Montana public television organizations;
- (j) school districts not located on reservations; and
- (k) the Montana state library.

(7) State entities that operate film and video studios and equipment shall cooperate with each local tribal preservation program in the production of materials for preservation and archival purposes.

(8) Any cultural and intellectual property rights from program efforts belong to the tribe. Use of the cultural and intellectual property may be negotiated between the tribe and other partnering entities.

(9) *A tribe may use payments received pursuant to this section as matching funds for federal or private fund sources to accomplish the purposes of this section. (Terminates June 30, 2017--sec. 3, Ch. 426, L. 2015.)*

Section 2. Section 7, Chapter 410, Laws of 2013, is amended to read:

“Section 7. Termination. [This act] terminates June 30, ~~2015~~ 2019.”

Section 3. Section 3, Chapter 426, Laws of 2015, is amended to read:

“Section 3. Section 7, Chapter 410, Laws of 2013, is amended to read:

“Section 7. Termination. [This act] terminates June 30, ~~2015~~ 2017 2019.”

Section 4. Section 7, Chapter 426, Laws of 2015, is amended to read:

“Section 7. Termination. [This act] terminates June 30, ~~2017~~ 2019.”

Section 5. Appropriation. There is appropriated \$1 million from the state general fund to the state-tribal economic development commission for the biennium beginning July 1, 2017, for the purposes described in 20-9-537. Any remaining funds that are unencumbered as of June 30, 2019, must revert to the general fund.

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 7. Coordination instruction. If House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 has an appropriation for the

Montana Indian language preservation program, then [section 5 of this act] is void.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Termination. [Section 1] terminates June 30, 2019.

Approved April 25, 2017

CHAPTER NO. 233

[HB 118]

AN ACT REVISING THE STATE SUICIDE PREVENTION PROGRAM; CLARIFYING THE DUTIES OF THE SUICIDE PREVENTION OFFICER; ESTABLISHING REQUIREMENTS FOR SUICIDE PREVENTION GRANTS; IMPLEMENTING PORTIONS OF THE MONTANA NATIVE YOUTH SUICIDE REDUCTION STRATEGIC PLAN; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 53-6-1201 AND 53-21-1101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-1101, MCA, is amended to read:

“53-21-1101. Suicide prevention officer – duties. (1) The department of public health and human services shall implement a suicide prevention program by ~~January 1, 2008. The program must be administered by a suicide prevention officer attached to the office of the director of the department.~~

(2) The suicide prevention officer shall:

(a) coordinate all suicide prevention activities being conducted by the department, including activities in the addictive and mental disorders division, the health resources division, and the public health and safety division, and coordinate with any suicide prevention activities that are conducted by other state agencies, including the office of the superintendent of public instruction, the department of corrections, the department of military affairs, and the university system;

(b) develop a biennial suicide reduction plan that addresses reducing suicides by Montanans of all ages, *ethnic groups, and occupations*;

(c) direct a statewide suicide prevention program with *evidence-based* activities that include but are not limited to:

(i) conducting statewide public awareness campaigns *aimed at normalizing the need for all Montanans to address mental health problems and* utilizing both paid and free media, *including digital and social media*, and including input from government agencies, school representatives from elementary schools through higher education, mental health advocacy groups, *veteran groups*, and other relevant nonprofit organizations;

(ii) initiating, in partnership with Montana’s tribes and tribal organizations, a public awareness program that is culturally appropriate and that utilizes the modalities best suited for Indian country;

(iii) seeking opportunities for research that will improve understanding of suicide in Montana and provide increased suicide-related services;

(iv) training for medical professionals, military personnel, school personnel, social service providers, and the general public on recognizing the early warning signs of suicidality, depression, and other mental illnesses; and

(v) providing grants to ~~communities or other government, nonprofit, or tribal entities to start new or sustain existing suicide prevention activities~~ *entities including but not limited to tribes, tribal and urban health organizations, local governments, schools, health care providers, professional*

associations, and other nonprofit and community organizations for development or expansion of evidence-based suicide prevention programs in accordance with the requirements of [section 2].”

Section 2. Suicide prevention grants. (1) The department of public health and human services shall administer a grant program from funds appropriated by the legislature for suicide prevention activities pursuant to this section.

(2) (a) To be eligible for a grant under this section, an entity shall demonstrate credible evidence to the department that the activity to be funded is effective in preventing suicide.

(b) An activity must be considered effective if it meets one or more of the following criteria:

- (i) it has been cited as effective by peer-reviewed research or literature;
- (ii) it was a formally adopted recommendation of the Montana suicide review team established in section 3, Chapter 353, Laws of 2013; or
- (iii) it increases knowledge of and response to adverse childhood experiences.

Section 3. Section 53-6-1201, MCA, is amended to read:

“53-6-1201. Special revenue fund – health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

- (a) money from cigarette taxes deposited under 16-11-119(1)(d);
- (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; ~~and~~

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216; *and*

(h) *grants to schools for suicide prevention activities, for the biennium beginning July 1, 2017.*

(4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as

appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(b) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 4. Appropriations – reporting requirements. (1) (a) There is appropriated \$500,000 from the tobacco settlement proceeds in the state special revenue account established in 17-6-603 to the department of public health and human services for the biennium beginning July 1, 2017, for grants made pursuant to 53-21-1101(2)(c)(v) and [section 2] for the prevention of suicides by Montanans, including veterans.

(b) Grant activities funded pursuant to this subsection (1) must be provided or supervised by a health care provider as defined in 50-16-504(7).

(c) The legislature intends that the appropriation in this subsection (1) be considered a part of the ongoing base for the next legislative session.

(2) (a) There is appropriated \$250,000 from the state special revenue account established in 53-6-1201 to the department of public health and human services for assisting with state and tribal efforts to implement the action steps of the Montana native youth suicide reduction plan published in January 2017.

(b) The legislature intends that the appropriation in this subsection (2) be a one-time-only appropriation.

(3) (a) There is appropriated \$250,000 from the state special revenue account established in 53-6-1201 to the department of public health and human services to provide grants for school-based suicide prevention activities.

(b) The legislature intends that the appropriation in this subsection (3) be a one-time-only appropriation.

(4) The department shall report regularly to the appropriate interim committees on the use of the appropriations, including the activities undertaken by the department and by grantees.

(5) The grantees shall report at the end of the biennium on the outcomes of the grant activities and whether an objective decrease in the suicide rate occurred in their communities. The report must be provided to the department of public health and human services and to the 2019 joint appropriations subcommittee on health and human services.

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 53, chapter 21, part 11, and the provisions of Title 53, chapter 21, part 11, apply to [section 2].

Section 7. Coordination instruction. If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains a line item appropriation totaling \$1 million to the department of public health and human services for suicide prevention and [this act] contains appropriations totaling

\$1 million to the department of public health and human services for use as provided in [section 4], then the appropriation in House Bill No. 2 is void.

Section 8. Effective date. [This act] is effective July 1, 2017.

Approved April 25, 2017

CHAPTER NO. 234

[HB 185]

AN ACT ESTABLISHING A GRANT PROGRAM TO REDUCE OR ELIMINATE TUITION COSTS FOR CERTAIN POSTSECONDARY PROGRAMS; AUTHORIZING THE BOARD OF REGENTS TO ADMINISTER THE PROGRAM; PROVIDING PROGRAM REQUIREMENTS INCLUDING STUDENT ELIGIBILITY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be cited as the “Montana Promise Act”.

Section 2. Purpose. The purpose of [sections 1 through 3] is to increase college affordability and attainment for and decrease the amount of college debt incurred by Montana residents who utilize community and tribal colleges and 2-year institutions of the Montana university system.

Section 3. Montana promise grant program – student eligibility – administration. (1) There is a Montana promise grant program for the purpose of providing grants to students who meet the criteria for certain postsecondary programs pursuant to subsection (2). The program is administered by the board of regents through the office of the commissioner of higher education. The board of regents shall adopt policies for the administration of the program consistent with [sections 1 through 3].

(2) To be eligible for a grant under the program, a student must:

(a) be enrolled at least half-time in a community or tribal college located in the state of Montana or in a 2-year institution of the Montana university system and taking courses that lead to:

(i) the ability to transfer to another postsecondary institution entering as at least a second-year student;

(ii) an associate degree offered by the institution; or

(iii) a professional credential offered by the institution;

(b) have been a resident of Montana for at least 12 months prior to applying for the grant program;

(c) have graduated from high school or received a secondary education equivalency certificate;

(d) have demonstrated academic ability through earning a cumulative grade point average of at least 2.5 in high school or through other measures as determined by the board of regents;

(e) have completed and submitted the free application for federal student aid for the current academic year and accepted all federal and state aid grants available; and

(f) have not completed more than 60 credit hours or the equivalent at a postsecondary institution or earned an associate degree.

(3) A student awarded a grant under the Montana promise grant program may receive a grant for no more than 2 years and is eligible for grants only if the student is making satisfactory progress as determined by the board of regents in courses described in subsection (2)(a), maintaining a cumulative

grade point average of at least 2.7, and contributing a minimum of 8 hours of community service each semester.

(4) Montana promise grants must be awarded based on each term for which a student is eligible. The amount of the grant must be the greater of \$75 per enrolled credit or the amount of tuition remaining due after any other federal, state, or private aid grants or waivers have reduced the tuition amount.

(5) (a) Except as provided in subsection (5)(b), the total amount in grants awarded under this section may not exceed \$2 million in each fiscal year or any lesser amount appropriated by the legislature.

(b) The board of regents may accept donations from private or out-of-state public sources for this program and shall distribute any funding received in accordance with [sections 1 through 3].

(6) If the amount of funding is not sufficient to provide grants to all eligible students, the board of regents may adopt policies for the prioritization of grants based on the following criteria in order:

(a) previous participation in the grant program with students who have previously received grants through the program receiving priority;

(b) financial need;

(c) students in programs for professional credentialing in high-demand labor markets; and

(d) recency of graduation from high school or completion of secondary education equivalency certification, with priority to more recent graduates and completers.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 26, part 6, and the provisions of Title 20, chapter 26, part 6, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2017.

Approved April 25, 2017

CHAPTER NO. 235

[HB 303]

AN ACT CREATING A CHILD ABUSE AND NEGLECT REVIEW COMMISSION FOR CASES INVOLVING CHILD ABUSE AND NEGLECT, INCLUDING FATALITIES AND NEAR FATALITIES; ESTABLISHING MEMBERSHIP REQUIREMENTS; ALLOWING FOR THE SHARING OF MEDICAL AND CRIMINAL JUSTICE INFORMATION RELATED TO CHILD ABUSE AND NEGLECT FATALITIES AND NEAR FATALITIES; PROVIDING CONFIDENTIALITY; REQUIRING A REPORT; AMENDING SECTIONS 41-3-201, 41-3-205, 44-5-303, 50-16-522, 50-16-525, 50-16-804, AND 50-16-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Child abuse and neglect review commission. (1) Within existing resources, there is a multidisciplinary child abuse and neglect review commission in the department of public health and human services to carry out the duties described in [section 2].

(2) The attorney general and governor shall appoint members to the commission.

(a) Members appointed by the attorney general must include:

- (i) the child and family ombudsman;
- (ii) a representative of law enforcement;
- (iii) a representative of the judiciary;

(iv) an attorney who litigates in the area of child abuse and neglect, including an attorney who represents children and court-appointed special advocates;

(v) a licensed foster parent;

(vi) an adult who was a former victim of child abuse and neglect; and

(vii) a member of the legislature.

(b) Members appointed by the governor must include:

(i) a representative of the child and family services division of the department of public health and human services;

(ii) a representative of private organizations that are involved in matters related to child abuse and neglect;

(iii) a medical provider who is involved in matters related to child abuse and neglect;

(iv) a mental health provider with experience in treating co-occurring disorders;

(v) a representative of the Montana Indian tribes;

(vi) a licensed provider who serves children with disabilities; and

(vii) a representative of an organization that works with homeless children and youth.

(3) The members shall serve without compensation by the commission but may be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of the state or of any political subdivision of the state are entitled to their regular compensation.

Section 2. Child abuse and neglect review commission – duties – confidentiality – liability – report to legislature. (1) Within existing resources, the child abuse and neglect review commission established in [section 1] shall:

(a) examine the trends and patterns of child abuse and neglect, including fatalities and near fatalities attributable to child abuse and neglect;

(b) educate the public, service providers, and policymakers about child abuse and neglect, including fatalities and near fatalities attributable to child abuse and neglect, and about strategies for intervention in and prevention of child abuse and neglect;

(c) coordinate with the child fatality review team and the domestic fatality review commission as appropriate;

(d) study the laws, practices, policies, successes, and failures of surrounding states in the area of combating child abuse and neglect and consider whether any should be adopted in Montana; and

(e) recommend policies, practices, and services that may encourage collaboration and reduce fatalities and near fatalities attributable to child abuse and neglect.

(2) The commission members may determine the frequency with which the commission will meet, but the commission must meet at least once a year.

(3) The commission shall select and review a representative sample of child abuse and neglect cases that resulted in a fatality or near fatality.

(4) Upon written request from the commission, a person who possesses records necessary and relevant to a review being conducted under this section shall, as soon as practicable, provide the commission with the records.

(5) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(6) (a) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge in camera and ordered to be provided to the person seeking access.

(b) The commission shall disclose conclusions and recommendations on request but may not disclose records that are otherwise confidential.

(c) The commission may not use the records for purposes other than those allowed under subsections (1)(a) and (1)(c).

(7) The commission may:

(a) require a person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings; and

(b) enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential records.

(8) A member of the commission who knowingly uses records obtained pursuant to subsection (4) for a purpose not authorized in subsection (1) or who discloses records in violation of subsection (6) is subject to a civil penalty of not more than \$500.

(9) (a) The commission shall report its findings and recommendations in writing to the children, families, health, and human services interim committee, the law and justice interim committee, the governor, and the chief justice of the Montana supreme court prior to each regular legislative session. The report shall contain the following information:

(i) the cause and circumstances of each fatality and near fatality attributable to child abuse or neglect reviewed by the commission;

(ii) the age and gender of each child involved;

(iii) information describing any previous reports of child abuse or neglect and the results of any investigations into those reports that are pertinent to the child abuse or neglect that led to each fatality or near fatality; and

(iv) the services provided by and actions of the department of public health and human services on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

(b) The commission periodically may issue other data or information in addition to the report.

(10) The biennial report may exclude information required under subsection (9) for cases in which reporting the information would:

(a) be detrimental to the safety and well-being of the child, parents, or family;

(b) jeopardize a criminal investigation; or

(c) interfere with the protection of individuals who report child abuse or neglect.

(11) For the purposes of this section, "near fatality" means an incident in which a child was certified by a physician to be in a medically serious or critical condition because of an action that constituted child abuse or neglect.

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child

is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy, as defined in 15-6-201(2)(b);

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(5) (a) When a professional or official required to report under subsection (2) makes a report, the department may share information with:

(i) that professional or official; or

(ii) other individuals with whom the professional or official works in an official capacity if the individuals are part of a team that responds to matters involving the child or the person about whom the report was made and the professional or official has asked that the information be shared with the individuals; or

(iii) *the child abuse and neglect review commission established in [section 1].*

(b) The department may provide information in accordance with 41-3-202(8) and also share information about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child who is the subject of the report.

(c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality of the information as required by 41-3-205.

(6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(7) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 4. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality – disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (8) and (9), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of

any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department, *including the child abuse and neglect review commission established in [section 1]*;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

(i) the attorney general;

(ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;

(iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or

(iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

(i) the death of the child as a result of child abuse or neglect;

(ii) a sexual offense, as defined in 46-23-502, against the child;

(iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(5) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(6) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(7) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(8) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(9) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (8) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(10) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 5. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information -- procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a chief of a governmental fire agency organized under Title 7, chapter 33, or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with *the child abuse and neglect review commission established in [section 1]* and local fetal, infant, child, and maternal mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the *review commission* or the review team. The *review commission*, the review team, and the county attorney or the *county attorney's* designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible.”

Section 6. Section 50-16-522, MCA, is amended to read:

“50-16-522. Representative of deceased patient. Except as provided in [section 2] and 50-19-402, a personal representative of a deceased patient may exercise all of the deceased patient’s rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient’s rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased patient.”

Section 7. Section 50-16-525, MCA, is amended to read:

“50-16-525. Disclosure by health care provider. (1) Except as authorized in [section 2], 50-16-529, 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient’s written authorization. A disclosure made under a patient’s written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient’s recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.”

Section 8. Section 50-16-804, MCA, is amended to read:

“50-16-804. Representative of deceased patient’s estate. Except as provided in [section 2] and 50-19-402, a personal representative of a deceased

patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person."

Section 9. Section 50-16-805, MCA, is amended to read:

"50-16-805. Disclosure of information allowed for certain purposes.

(1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

(3) A health care provider may disclose health care information to:

(a) a fetal, infant, child, and maternal mortality review team for the purposes of 50-19-402; and

(b) *the child abuse and neglect review commission established in [section 1].*"

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [section 2].

Section 11. Effective date – applicability. [This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act].

Section 12. Termination. [Sections 1 through 9] terminate September 30, 2021.

Approved April 25, 2017

CHAPTER NO. 236

[HB 415]

AN ACT CLARIFYING THAT VEHICLES TRAVELING ON ROADWAYS WITH TWO OR MORE LANES OF TRAFFIC MOVING IN THE SAME DIRECTION MUST STAY IN THE RIGHT LANE WITH CERTAIN EXCEPTIONS; AND AMENDING SECTION 61-8-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-321, MCA, is amended to read:

"61-8-321. Drive on right side of roadway – exceptions. (1) Upon all roadways of sufficient width, a vehicle must be operated upon the right half of the roadway, except as follows:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing the passing movement;

(b) when the right half of a roadway is closed to traffic while under construction or repair;

(c) upon a roadway divided into three marked lanes for traffic under the rules applicable on a divided roadway;

(d) upon a roadway designated by official traffic control devices for one-way traffic;

(e) when the operator of a vehicle is complying with the provisions of 61-8-346; ~~or~~

(f) when an obstruction exists that makes it necessary to drive to the left of the center of the roadway; *or*

(g) *when a police vehicle or authorized emergency vehicle is performing a job-related duty as provided in 61-8-107.*

(2) A person operating a vehicle to the left of the center of the roadway for any of the reasons provided in subsection (1) shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway that are within a distance that constitutes an immediate hazard.

~~(3) A vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing must be operated in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway:~~

~~(a) Except as provided in subsection (3)(b) and subject to subsection (4), upon all roadways having two or more lanes for traffic moving in the same direction, a vehicle must be driven in the right-hand lane.~~

~~(b) A vehicle being operated upon a roadway having two or more lanes for traffic moving in the same direction is not required to be driven in the right-hand lane when:~~

~~(i) overtaking and passing another vehicle proceeding in the same direction;~~

~~(ii) traveling at a speed greater than the traffic flow;~~

~~(iii) moving left to allow traffic to merge;~~

~~(iv) traveling on a roadway within the official boundaries of a city or town, except as provided in subsection (4);~~

~~(v) preparing for a left turn at an intersection or into a private road or driveway when a left turn is legally permitted;~~

~~(vi) exiting onto a left-hand exit from a controlled-access highway;~~

~~(vii) an obstruction or hazardous conditions make it necessary to drive in a lane other than the right-hand lane;~~

~~(viii) road or vehicle conditions make it safer to drive in a lane other than the right-hand lane; or~~

~~(ix) authorized snow-removal equipment is operating on the roadway.~~

~~(4) When traveling upon an interstate highway, as defined in 60-5-102, within the official boundaries of a city or town, a vehicle must be driven in the right-hand lane unless otherwise directed or permitted by an official traffic control device."~~

Approved April 25, 2017

CHAPTER NO. 237

[SB 281]

AN ACT REVISING USE OF FIRE SUPPRESSION ACCOUNT FUNDS; REQUIRING EXPENDITURES FOR CERTAIN FIRE EXPENDITURES IF THE ACCOUNT BALANCE EXCEEDS \$40 MILLION; ADDING ALLOWABLE EXPENDITURES; AMENDING SECTION 76-13-150, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-150, MCA, is amended to read:

“76-13-150. Fire suppression account – fund transfer. (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) The legislature may transfer money from other funds to the account, and the money in the account is subject to legislative fund transfers.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for: ~~the purpose of paying expenses for fire prevention, including fuel reduction and mitigation, forest restoration, grants for the purchase of fire suppression equipment for county cooperatives, and~~

(a) fire suppression costs;

(b) *fuel reduction and mitigation;*

(c) *forest restoration;*

(d) *grants for the purchase of fire suppression equipment for county cooperatives;*

(e) *forest management projects on federal land;*

(f) *support for collaborative groups that include at least one representative of an affected county commission that is engaged with a federal forest project and for local governments engaged in litigation related to federal forest projects; and*

(g) *road maintenance on federal lands.;*

(5) Interest earned on the balance of the account is retained in the account.

(6) Except as provided in subsections (7) and (8), by August 15 following the end of each fiscal year, an amount equal to the balance of unexpended and unencumbered general fund money appropriated in excess of 0.5% of the total general fund money appropriated for that fiscal year must be transferred by the state treasurer from the general fund to the fire suppression account. General fund appropriations that continue from a fiscal year to the next fiscal year and any general fund appropriations made pursuant to 10-3-310 or 10-3-312 are excluded from the calculation.

(7) The provisions of subsection (6) do not apply in a fiscal year in which reductions required by 17-7-140 occur or if a transfer pursuant to subsection (6) would require reductions pursuant to 17-7-140.

(8) The fund balance in the account may not exceed \$100 million.

(9) ~~Up to \$5 million each biennium may be used for the purpose of fuel reduction and mitigation and forest restoration~~ *On July 1 at the end of each odd-numbered fiscal year, if the balance in the account exceeds \$40 million, the excess, up to \$5 million, must be used for the purposes in subsections (4)(b) through (4)(g). Of that amount, no more than 5% may be used for the purposes of subsection (4)(f).*

(10) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in subsection (4).”

Approved April 28, 2017

CHAPTER NO. 238

[SB 352]

AN ACT ESTABLISHING THE MONTANA BALLOT INTERFERENCE PREVENTION ACT; PROHIBITING THE COLLECTION OF ANOTHER

INDIVIDUAL'S BALLOT; PROVIDING EXCEPTIONS; REQUIRING CERTAIN INDIVIDUALS WHO ARE AUTHORIZED TO COLLECT BALLOTS TO PROVIDE CERTAIN INFORMATION WHEN DELIVERING THE BALLOT TO A POLLING PLACE OR ELECTION ADMINISTRATOR'S OFFICE; PROVIDING PENALTIES AND DEFINITIONS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Ballot Interference Prevention Act".

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

- (1) "Acquaintance" means an individual known by the voter.
- (2) "Caregiver" means an individual who provides medical or health care assistance to the voter in a residence, nursing care institution, hospice facility, assisted living center, assisted living home, residential care institution, adult day health care facility, or adult foster care home.
- (3) "Collect" means to gain possession or control of a ballot.
- (4) "Family member" means an individual who is related to the voter by blood, marriage, adoption, or legal guardianship.
- (5) "Household member" means an individual who resides at the same residence as the voter.

Section 3. Ballot collection prohibited – exceptions. (1) Except as provided in subsection (2), a person may not knowingly collect a voter's voted or unvoted ballot.

- (2) This section does not apply to:
 - (a) an election official;
 - (b) a United States postal service worker or other individual specifically authorized by law to transmit United States mail;
 - (c) a caregiver;
 - (d) a family member;
 - (e) a household member; or
 - (f) an acquaintance.
- (3) An individual authorized to collect a voter's ballot pursuant to subsection (2)(c) through (2)(f) may not collect and convey more than six ballots.

Section 4. Record of delivery. An individual permitted to collect and convey a ballot under [section 3(2)(c) through (2)(f)] shall sign a registry when delivering the ballot to the polling place or the election administrator's office. In addition to the signature requirement, the individual collecting and conveying the ballot must provide the following information:

- (1) the individual's name, address, and phone number;
- (2) the voter's name and address; and
- (3) the individual's relationship to the voter required to collect and convey a ballot pursuant to [section 3(2)(c) through (2)(f)].

Section 5. Penalty. A violation of a provision of [sections 1 through 5] is punishable by a fine of \$500 for each ballot unlawfully collected.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 13, chapter 35, and the provisions of Title 13, chapter 35, apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective upon approval by the electorate.

Section 8. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2018 by printing on the ballot the full title of [this act] and the following:

- YES on Legislative Referendum ____.
- NO on Legislative Referendum ____.

CHAPTER NO. 239

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2017; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2018 AND 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program

Judiciary

District Court Operations

Adult Treatment Court Expansion Enhancement FY2017 \$300,000 Federal

All remaining fiscal year 2017 federal budget amendment authority for the Beaverhead County accountability court is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the adult treatment court expansion enhancement and the first judicial district family court is authorized to continue into federal fiscal year 2019.

Secretary of State

Business and Government Services

All remaining fiscal year 2017 federal budget amendment authority for the help America vote grant is authorized to continue into federal fiscal year 2019.

Office of Public Instruction

State Level Activities

All remaining fiscal year 2017 federal budget amendment authority for the preschool development grant is authorized to continue into state fiscal year 2018.

Local Education Activities

All remaining fiscal year 2017 federal budget amendment authority for the preschool development grant is authorized to continue into state fiscal year 2018.

Crime Control Division

Justice System Support Services

All remaining fiscal year 2017 federal budget amendment authority for the victim assistance formula grant, the victim assistance discretionary grant training program, vision 21: linking systems of care for children and youth

in Montana, and the crime victims legal assistance network is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the sexual assault kit initiative grant, the enhanced training and services to end abuse later in life grant, and the crisis intervention and suicide prevention through collaborative partnerships grant is authorized to continue into federal fiscal year 2019.

Department of Justice

Legal Services Division

All remaining fiscal year 2017 federal budget amendment authority for the Intercede project is authorized to continue into state fiscal year 2018.

Motor Vehicle Division

All remaining fiscal year 2017 federal budget amendment authority for the commercial driver's license program implementation grant is authorized to continue into federal fiscal year 2019.

Montana Highway Patrol

Fiscal Year 2017 High Intensity Drug Trafficking Areas Program

FY2017	\$22,394	Federal
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All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2016 high intensity drug trafficking areas program is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 for the fiscal year 2017 high intensity drug trafficking areas program is authorized to continue into state fiscal year 2019.

Division of Criminal Investigation

Overtime Funding for Narcotics Bureau Agents	FY2017	\$18,000	Federal
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Overtime Funding for the Northwest Drug Task Force

FY2017	\$21,000	Federal
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All remaining fiscal year 2017 federal budget amendment authority for overtime funding for the northwest drug task force is authorized to continue into state fiscal year 2018.

Forensic Science Division

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2015 DNA program initiative is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2016 DNA program initiative is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for the sexual assault forensic evidence program is authorized to continue into federal fiscal year 2019.

Commissioner of Higher Education

Administration Program

All remaining fiscal year 2017 federal budget amendment authority for the western interstate commission for higher education programs and services is authorized to continue into federal fiscal year 2019.

Montana Historical Society

Research Center

Digital Sales to the Public	FY2017	\$5,000	Proprietary
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Montana Board Programming Grant	FY2017	\$17,245	Federal
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All remaining fiscal year 2017 federal budget amendment authority for the Montana board programming grant is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for analysis and optimization of the mechanical systems for sustainable

preservation of collections and for the Montana brewery oral history project is authorized to continue into federal fiscal year 2018.

Historic Preservation Program

All remaining fiscal year 2017 federal budget amendment authority for data sharing with the bureau of land management and for the cultural resources information database is authorized to continue into federal fiscal year 2019.

Department of Fish, Wildlife, and Parks

Fisheries Division

Watershed Restoration Opportunities in the Selway Meadows Area

FY2017	\$64,975	Federal
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Fish Habitat in the Flathead Basin Watersheds

FY2017	\$68,000	Federal
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All remaining fiscal year 2017 federal budget amendment authority for westslope cutthroat trout and bull trout sampling in the Beaverhead-Deerlodge national forest, for restoring westslope cutthroat trout into Cherry Creek, for painted rocks reservoir operations and maintenance, for the Blackfoot River recreation management partnership, for the westslope cutthroat trout genetics grant, for the pallid sturgeon population assessment project, for the Sanford Park fisheries habitat enhancement project, for fish habitat in the Flathead Basin watersheds, and for restoring westslope cutthroat trout into streams in the Helena-Lewis and Clark national forest is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for Yellowstone-Montana broodstock development is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the Moose and French Creek restoration project, and for the French Creek culvert replacement and stream restoration project is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for aquatic invasive species prevention, for the pallid sturgeon tagging and telemetry study and for watershed restoration opportunities in the Selway Meadows area is authorized to continue into federal fiscal year 2019.

Enforcement Division

All remaining fiscal year 2017 federal budget amendment authority for the Ashland ranger district aerial support grant is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for the turn in poachers program participation is authorized to continue into federal fiscal year 2019.

Wildlife Division

All remaining fiscal year 2017 federal budget amendment authority for the Kootenai River operations mitigation and evaluation project is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for grizzly bear conservation, for grizzly bear conflict management throughout the Cabinet-Yaak ecosystem, for expanding recreational access and sage grouse initiative longevity, and for the fiscal year 2014 legacy administration grant is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for implementing prairie pothole joint venture conservation activities and for wolverine study activities is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for the Montana bighorn sheep study, for the sage grouse grazing research study,

for grizzly bear management assistance, for evaluating grazing treatments on Lake Mason national wildlife refuge for greater sage grouse population and habitat maintenance, for studying elk response to changes in habitat in the Elkhorn Mountains, for the Montana wolf monitoring study, for the fiscal year 2015 forest legacy administration grant, for the fiscal year 2016 legacy administration grant, for the sharp-tail grouse grazing evaluation, for the carnivore management and elk recruitment grant, for determining the impacts of grazing prescriptions on food availability for grouse species, for the statewide mule deer study, for the bat foraging and roosting study, for the migratory songbird grazing study, and for sheep and goat baseline monitoring is authorized to continue into federal fiscal year 2019.

Parks Division

Smith River Ranger

FY2017

\$7,000

Federal

All remaining fiscal year 2017 federal budget amendment authority for management of the Smith River corridor is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the Smith River ranger is authorized to continue into federal fiscal year 2019.

Capital Outlay

Stream Restoration of Big Spring Creek FY2017 \$27,585 Federal

All remaining fiscal year 2017 federal budget amendment authority for arctic grayling spawning habitat is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the Clear Creek conservation legacy project is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for stream restoration of Big Spring Creek, for the Egge-Dam diversion and fish passage project, and for the Montana wildlife lands program is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for fish barrier removal, for the Trumbull Creek watershed legacy project, for the restoration of self-sustaining arctic grayling and westslope cutthroat trout population in Elk Lake, and for acquiring agricultural land easements is authorized to continue into federal fiscal year 2019.

Department of Environmental Quality

Central Services Division

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2016 exchange network grant is authorized to continue into federal fiscal year 2019.

Water Quality Division

All remaining fiscal year 2017 federal budget amendment authority for the section 106 monitoring initiative is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for the nonpoint source projects grant is authorized to continue into federal fiscal year 2019.

Waste Management and Remediation Division

All remaining fiscal year 2017 federal budget amendment authority for the abandoned mine lands reclamation program is authorized to continue into federal fiscal year 2019.

Air, Energy, and Mining Division

Community-Scale Solar Strategy Project FY2017 \$380,000 Federal

Zortman-Landusky Water Treatment and Reclamation

	FY2017	\$400,000	Federal
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All remaining fiscal year 2017 federal budget amendment authority for the coal application program manager, for the energy efficiency leadership challenge for Montana's K-12 schools, and for the community-scale solar strategy project is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the strategic energy blueprint is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the coal application development and for Zortman-Landusky water treatment and reclamation is authorized to continue into federal fiscal year 2019.

Department of Transportation
General Operations Program

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2015 on-the-job training supportive services program is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2016 on-the-job training support services program is authorized to continue into federal fiscal year 2019.

Highway and Engineering

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2015 emergency relief funds, for the fiscal year 2015 accelerated innovative deployment demonstration, for the fiscal year 2015 redistribution of federal-aid highway program, and the fiscal year 2016 redistribution of federal-aid highway program is authorized to continue into federal fiscal year 2019.

Aeronautics Division

All remaining fiscal year 2017 federal budget amendment authority for the Yellowstone airport terminal area master plan study is authorized to continue into federal fiscal year 2019.

Department of Natural Resources and Conservation

Conservation and Resource Development Division

Invasive Species Early Detection and Rapid Response for Mussels

	FY2017	\$60,000	Federal
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Aquatic Invasive Species Prevention	FY2017	\$20,000	Federal
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All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2015 clean water act, for the fiscal year 2015 safe drinking water act, and for the invasive species early detection and rapid response for mussels is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for aquatic invasive species prevention is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the water pollution control capitalization grant and for the drinking water state revolving fund capitalization grant is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2013 safe drinking water act, for support of the density disturbance calculation tool, for the conservation technical assistance and conservation cost-share programs, and for the fiscal year 2014 safe drinking water act is authorized to continue into federal fiscal year 2019.

Water Resources Division

National Drought Resiliency Partnership	FY2017	\$20,000	Federal
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Coordination on Water Transactions	FY2017	\$42,125	Federal
Building Drought Resiliency in the Missouri Headwaters Basin	FY2017	\$200,000	Federal
Federal Reimbursements	FY2017	\$529	Federal

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2016 community engagement and risk communication cooperating technical partners grant, for the public water system surveys, for the national drought resiliency partnership, for coordination on water transactions, and for the fiscal year 2016 project management cooperating technical partners grant is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for building drought resiliency in the Missouri Headwaters Basin is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the West Gallatin cooperating technical partners grant, for the Bozeman Creek cooperating technical partners grant, for the fiscal year 2015 community engagement and risk communication cooperating technical partners grant, for the Musselshell cooperating technical partners grant, for the Mineral County cooperating technical partners grant, for the Beaverhead County cooperating technical partners grant, and for the Swan River cooperating technical partners grant is authorized to continue into federal fiscal year 2019.

Forest and Trust Lands

Prescribed Burning Activities in the Kootenai National Forest	FY2017	\$1,000	Federal
25th Anniversary Commemorative Assistance Grant	FY2017	\$50,000	Federal
Consolidated Payments Grant	FY2017	\$150,000	Federal

All remaining fiscal year 2017 federal budget amendment authority for the Helena interagency dispatch center, for prescribed burning activities in Carbon and Stillwater Counties, and for prescribed burning activities in the Lolo national forest is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the Red Mountain Chessman Reservoir flume, for the fiscal year 2015 hazardous fuels reduction grant, for the fiscal year 2015 consolidated payments grant, for the wood utilization assistance and wood innovation grant, for the fiscal year 2013 consolidated payments grant, for the fiscal year 2013 hazardous fuels reduction grant, for the fiscal year 2013 western bark beetle grant, and for the fiscal year 2013 community forest and open space administration grant is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for fire control in the Kootenai national forest, for prescribed burning activities in the Kootenai national forest, for the Missoula field office's prescribed burning activities, for the Lewistown field office's prescribed burning activities, for the conservation reserve program sign-ups, and for the Glasgow field office's prescribed burning activities is authorized to continue into state fiscal year 2019.

All remaining fiscal year 2017 federal budget amendment authority for the Red Mountain Chessman Reservoir flume stewardship agreement, for prescribed burning in the Beaverhead-Deerlodge national forest, for prescribed burning in the Custer Gallatin national forest, for prescribed burning in the Helena-Lewis and Clark national forest, for the fiscal year 2016 consolidated payments grant, for the fiscal year 2017 consolidated payments grant, for the landscape scale restoration consolidated payments grant, for the fiscal year 2016 wood products and biomass program, for fiscal year 2016 hazardous

fuels reduction, for the statewide wood energy grant, for the 25th anniversary commemorative assistance grant, and for fiscal year 2017 hazardous fuels reduction is authorized to continue into federal fiscal year 2019.

Department of Agriculture

Agricultural Sciences Division

Greater Sage Grouse Habitat Grant FY2017 \$11,796 Federal

All remaining fiscal year 2017 federal budget amendment for the greater sage grouse habitat grant is authorized to continue into federal fiscal year 2019.

Central Management Division

Greater Sage Grouse Habitat Grant FY2017 \$488,204 Federal

All remaining fiscal year 2017 federal budget amendment for the greater sage grouse habitat grant is authorized to continue into federal fiscal year 2019.

Agricultural Development Division

Certified State Agricultural Mediation Grant FY2017 \$30,000 Federal

All remaining fiscal year 2017 federal budget amendment authority for fiscal year 2015 Montana specialty crop block management is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for fiscal year 2016 Montana specialty crop block management is authorized to continue into federal fiscal year 2019.

Department of Corrections

Youth Services

All remaining fiscal year 2017 federal budget amendment authority for the small, rural school achievement program is authorized to continue into federal fiscal year 2018.

Department of Commerce

All remaining fiscal year 2017 federal budget amendment authority for the housing trust fund grant is authorized to continue into federal fiscal year 2019.

Housing Division

All remaining fiscal year 2017 federal budget amendment authority for the 811 project rental assistance demonstration program is authorized to continue into federal fiscal year 2019.

Department of Labor and Industry

Workforce Services Division

All remaining fiscal year 2017 federal budget amendment authority for state accelerator grants and for apprenticeship USA state expansion grants is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the reemployment and system integration dislocated worker grants is authorized to continue into federal fiscal year 2018.

Unemployment Insurance Division

All remaining fiscal year 2017 federal budget amendment authority for the unemployment insurance state administration is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the reemployment and system integration dislocated worker grants is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the integrity and consortium projects is authorized to continue into state fiscal year 2019.

Department of Military Affairs

Challenge Program

Youth Challenge Program Grant FY2017 \$240,559 Federal

All remaining fiscal year 2017 federal budget amendment authority for the youth challenge program grant is authorized to continue into state fiscal year 2018.

Starbase

Starbase Youth Program FY2017 \$264,259 Federal

All remaining fiscal year 2017 federal budget amendment authority for the starbase youth program is authorized to continue into state fiscal year 2018.

Army National Guard Program

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2013 Montana army national guard facilities programs is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the fiscal year 2014 and fiscal year 2015 Montana army national guard facilities programs is authorized to continue into federal fiscal year 2019.

Disaster and Emergency Services

All remaining fiscal year 2017 federal budget amendment authority for the flood risk mitigation activities along the Little Bighorn River is authorized to continue into state fiscal year 2018.

Department of Public Health and Human Services

Disability Employment Transitions

All remaining fiscal year 2017 federal budget amendment authority for the achieving success by promoting readiness for education and employment grant is authorized to continue into federal fiscal year 2018.

Human and Community Services

Food Distribution Program on Indian Reservations

FY2017 \$600,000 Federal

All remaining fiscal year 2017 federal budget amendment authority for the food distribution program on Indian reservations is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the food stamp program high-performance bonus is authorized to continue into federal fiscal year 2019.

Child and Family Services

All remaining fiscal year 2017 federal budget amendment authority for the adoption and legal guardian incentive payment program is authorized to continue into federal fiscal year 2019.

Public Health and Safety Division

WIC EBT Implementation FY2017 \$598,286 Federal

Montana Environmental Health Education and Assessment Program

FY2017 \$236,725 Federal

All remaining fiscal year 2017 federal budget amendment authority for the domestic Ebola supplement to epidemiology and laboratory capacity for infectious disease, for the Montana environmental health education and assessment program, and for immunization capacity building assistance is authorized to continue into state fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for the maternal, infant, and early childhood home visiting program grant and for the WIC EBT implementation is authorized to continue into federal fiscal year 2018.

All remaining fiscal year 2017 federal budget amendment authority for public health emergency preparedness for Ebola, preparedness and response activities, is authorized to continue into federal fiscal year 2019.

Senior and Long-Term Care

All remaining fiscal year 2017 federal budget amendment authority for the Montana community choice partnership is authorized to continue into federal fiscal year 2019.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2017

CHAPTER NO. 240

[HB 17]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCREASE SERVICE SLOTS AND ENHANCE REIMBURSEMENT RATES UNDER THE MEDICAID HOME AND COMMUNITY-BASED SERVICES WAIVER FOR ELDERLY AND PHYSICALLY DISABLED INDIVIDUALS; REQUIRING A REPORT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, when individuals with Alzheimer's disease or other dementias have the opportunity to maintain their dignity and self-esteem by living at home or in community residential settings their quality of life is increased; and

WHEREAS, many individuals with Alzheimer's disease or other dementias deplete their resources and turn to Medicaid to help them stay in their homes or in assisted living; and

WHEREAS, 504 Montanans who are entitled to nursing home care were on the waiting list for Medicaid home and community-based waiver services on August 1, 2016; and

WHEREAS, the average cost to the Montana Medicaid program for nursing home care is significantly more than the cost for care in assisted living or in the home; and

WHEREAS, 92% of Montanans want for themselves or their loved ones to live at home with assistance or in an assisted living or group home in their community if life becomes difficult due to illness; and

WHEREAS, there is a need to expand Medicaid home and community-based waiver services and to incentivize providers to offer care to Medicaid members in their homes or in assisted living settings to ensure that Medicaid members can choose the most appropriate setting in which to receive care and avoid unnecessary nursing home placement.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation – report. (1) (a) The following amounts are appropriated to the department of public health and human services to increase the number of basic and adult residential service slots under the home and community-based medicaid services waiver administered by the senior and long-term care division for elderly and physically disabled individuals:

Fiscal year 2018	\$1,083,686 federal special revenue
	\$585,064 general fund
Fiscal year 2019	\$2,528,601 federal special revenue
	\$1,365,149 general fund

(b) The department shall increase the number of basic and adult residential services slots by 200 slots over the biennium, phasing in 50 slots every 6 months of the biennium.

(2) (a) The following amounts are appropriated to the department of public health and human services to increase the reimbursement rate for adult residential service slots in the home and community-based services

waiver administered by the senior and long-term care division for elderly and physically disabled individuals:

Fiscal year 2018	\$2,185,989 federal special revenue
	\$1,180,178 general fund
Fiscal year 2019	\$3,990,608 federal special revenue
	\$2,154,461 general fund

(b) The appropriation provided for in this subsection (2) must be used to:

(i) increase the base daily reimbursement rate for 85% of the adult residential slots by \$5.80 starting July 1, 2017, and then every 6 months thereafter of the 2019 biennium; and

(ii) increase the base daily reimbursement rate for up to 15% of the adult residential slots by \$44.90 effective July 1, 2017, to pay for memory care for individuals with Alzheimer's disease or other dementias.

(3) The department shall report to the children, families, health, and human services interim committee by September 15, 2018, and to the 66th legislature, as provided in 5-11-210, on the effectiveness of the increased waiver slots and enhanced reimbursement rates. The report must include information on:

(a) the use of the new waiver slots;

(b) whether the increased reimbursement rates led to an increase in the number of providers accepting medicaid clients;

(c) whether the percentage of slots designated for memory care was adequate to address the need for that care; and

(d) whether fewer patients with Alzheimer's disease or other dementias were admitted to state facilities, including the Montana state hospital and the Montana mental health nursing care center. If fewer patients were admitted to state facilities, the department must estimate the amount of money saved by placing fewer individuals with Alzheimer's disease or other dementias in the facilities.

(4) The legislature intends that the appropriations in this section be considered a part of the ongoing base for the next legislative session.

Section 2. Effective date. [This act] is effective August 15, 2017.

Approved May 3, 2017

CHAPTER NO. 241

[HB 70]

AN ACT STRENGTHENING GUARDIANSHIP SERVICES IN MONTANA; ESTABLISHING A WORKING INTERDISCIPLINARY NETWORK OF GUARDIANSHIP STAKEHOLDERS; ESTABLISHING A PUBLIC GUARDIANSHIP GRANT PROGRAM; PROVIDING APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Working interdisciplinary network of guardianship stakeholders. (1) There is a working interdisciplinary network of guardianship stakeholders to provide ongoing evaluation of Montana laws, services, and practices related to adult guardianship and conservatorship.

(2) The network consists of nine members appointed by the chief justice of the Montana supreme court as follows, in a manner that reflects a geographic balance:

(a) a representative of a district court;

(b) a representative of the department of public health and human services who works in the area of adult protective services;

(c) a representative of an advocacy group for individuals with developmental disabilities;

(d) a representative of an advocacy group for senior citizens;

(e) a professional guardian or conservator;

(f) an unpaid guardian or conservator;

(g) a member of a volunteer guardianship council;

(h) a member of the Montana state bar association; and

(i) a health care provider with experience in working with patients in need of a guardianship.

(3) The chief justice shall appoint the presiding officer.

(4) After the initial appointments, members shall serve staggered 4-year terms and may be reappointed. Initial appointments must be for terms of at least 2 years.

(5) The network shall meet at least four times a year. Members may be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

Section 2. Duties of the working interdisciplinary network of guardianship stakeholders. The working interdisciplinary network of guardianship stakeholders shall:

(1) identify strengths and weaknesses in the state's current system of adult guardianship and conservatorship;

(2) identify less restrictive decisionmaking options for incapacitated persons;

(3) review national standards on guardianship and conservatorship practices and recommend standards for adoption in Montana;

(4) propose methods of training guardians and conservators in best practices or adopted standards;

(5) recommend or conduct other outreach, education, and training as needed;

(6) make recommendations to the supreme court administrator regarding grants to be awarded as provided in [section 3]; and

(7) serve as an ongoing problem-solving mechanism to enhance the quality of care and quality of life for adults who are or may soon be in the guardianship or conservatorship system.

Section 3. Grants for public guardianship programs. (1) The judicial branch shall make grants to organizations that provide guardianship services to indigent individuals for whom a guardian is not otherwise available. The grants must be used to provide training and guidance to family members serving as guardians, to public defenders and district court judges who are handling guardianship cases, and to volunteer guardians of indigent individuals who are unable to pay for guardianship services.

(2) In making grants, the judicial branch shall consider:

(a) recommendations of the working interdisciplinary network of guardianship stakeholders provided for in [section 2]; and

(b) geographic balance if awarding grants to more than one organization.

(3) Grant funds may not be allocated to or used by any organization or individual that serves on the working interdisciplinary network of guardianship stakeholders.

(4) The supreme court administrator shall establish procedures for grant applications, grant awards, grant distribution, and the accountability of money appropriated for the grant program.

Section 4. Appropriation. (1) There is appropriated \$80,000 from the general fund to the judicial branch for the biennium beginning July 1, 2017, to support the activities of the working interdisciplinary network of guardianship stakeholders established in [section 1], including hiring a 0.50 FTE.

(2) The legislature intends that the appropriation be considered a part of the ongoing base for the next legislative session.

(3) Money from the appropriation that is not spent during the biennium must revert to the general fund.

Section 5. Appropriation. (1) (a) There is appropriated \$120,000 from the general fund to the judicial branch for the fiscal year beginning July 1, 2018, to make grants for public guardianship programs as provided in [section 3].

(b) The appropriation may be used only for direct grants to organizations.

(2) The legislature intends that the appropriation be considered a part of the ongoing base for the next legislative session.

(3) Money from the appropriation that is not spent during the biennium must revert to the general fund.

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 3, chapter 1, part 7, and the provisions of Title 3, chapter 1, part 7, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective July 1, 2017.

Section 8. Termination. [Sections 1 through 3] terminate June 30, 2023.

Approved May 3, 2017

CHAPTER NO. 242

[HB 83]

AN ACT GENERALLY REVISING ELECTION LAWS; CLARIFYING WHEN AN ELECTION REQUESTED BY PETITION CONCERNING A LOCAL GOVERNMENT ORDINANCE MUST BE HELD; REVISING NOTICE REQUIREMENTS RELATED TO RESORT TAX ELECTIONS; REVISING THE DEADLINE FOR WRITE-IN CANDIDATES IN SPECIAL DISTRICT AND LOCAL GOVERNMENT ELECTIONS; REVISING THE DEADLINES BY WHICH ABSENTEE AND MAIL BALLOTS MUST BE AVAILABLE; CLARIFYING THE DEADLINE FOR THE CANCELLATION OF A CONSERVATION DISTRICT ELECTION; CLARIFYING THAT COUNTY ELECTION ADMINISTRATORS RATHER THAN SCHOOL CLERKS PERFORM VOTER REGISTRATION DUTIES FOR SCHOOL ELECTIONS; REVISING NOTICE REQUIREMENTS RELATED TO SCHOOL ELECTIONS; CLARIFYING VOTER QUALIFICATIONS FOR WATER AND SEWER DISTRICT ELECTIONS; REVISING CERTAIN ELECTION PROVISIONS RELATED TO IRRIGATION DISTRICTS; CLARIFYING THE TRANSITION OF TERMS OF OFFICE FOR SPECIAL DISTRICT OFFICERS; AMENDING SECTIONS 7-3-103, 7-3-149, 7-5-132, 7-6-1504, 7-13-2212, 13-1-101, 13-1-403, 13-1-404, 13-1-502, 13-2-301, 13-3-213, 13-10-211, 13-13-205, 13-13-222, 20-3-313, 20-20-204, AND 85-7-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-103, MCA, is amended to read:

“7-3-103. Amendment of self-government charter or adopted alternative form of government – election. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government as provided in 7-3-149. An amendment approved by

the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by:

- (a) petition as provided in 7-3-125;
- (b) *the local government by ordinance; or*
- (c) *a study commission recommendation pursuant to 7-3-192.*

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.”

Section 2. Section 7-3-149, MCA, is amended to read:

“7-3-149. Election on alteration of form of government. (1) ~~Upon the election administrator’s verification that a petition filed pursuant to sections 7-3-121 through 7-3-123, 7-3-125, and 7-3-141 through 7-3-148 meets all the necessary requirements, the~~ *The* governing body shall call an election on the question of an alteration of the form of government or a change in a plan of government ~~proposed by the petition upon:~~

(a) *the election administrator’s verification that a petition filed pursuant to sections 7-3-121 through 7-3-123, 7-3-125, and 7-3-141 through 7-3-148 meets all the necessary requirements;*

- (b) *adoption of a local government ordinance pursuant to 7-3-103(2)(b); or*
- (c) *a recommendation by a study commission pursuant to 7-3-192.*

(2) The election must be conducted in accordance with Title 13, chapter 1, part 4.

~~(2)(3)~~ (3) The cost of the election must be paid for by the local government.

~~(3)(4)~~ (4) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question must be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions must be submitted to the electors in the counties affected and require a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.”

Section 3. Section 7-5-132, MCA, is amended to read:

“7-5-132. Procedure for initiative or referendum election. (1) The electors of a local government may, by petition, request an election on whether to enact, repeal, or amend an ordinance. The form of the petition must be approved by the county election administrator. A petition signed by at least 15% of the local government’s qualified electors is sufficient to require an election.

(2) (a) If an approved petition containing sufficient signatures is filed prior to the ordinance’s effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting an election on whether to amend or repeal the ordinance delays the ordinance’s effective date until the ordinance is ratified by the electors.

(b) If an approved petition containing sufficient signatures is filed within 60 days after the effective date of an emergency ordinance, the emergency ordinance is suspended until it is ratified by the electors.

(3) The governing body may refer an existing or proposed ordinance to a vote of the people by resolution.

(4) A petition or resolution for an election must:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought, the ordinance to be amended and the proposed amendment, or the ordinance to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain transition provisions if the measure changes terms of office or forms of government.

(5) An election held pursuant to this section must be conducted *in conjunction with the next local government election held* in accordance with Title 13, chapter 1, part 4, except that if the petition asks for a special election, specifies an election date that complies with 13-1-405, and is signed by at least 25% of the qualified electors, a special election must be held on the date specified in the petition.

(6) If a majority of those voting on the question approve the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.”

Section 4. Section 7-6-1504, MCA, is amended to read:

“7-6-1504. Resort tax – election required – procedure – notice. (1)

A resort community or area may not impose or, except as provided in 7-6-1505, amend or repeal a resort tax unless the resort tax question has been approved by a majority of the qualified electors voting on the question.

(2) The resort tax question may be presented to the qualified electors of:

(a) a resort community by a petition of the electors as provided by 7-5-131, 7-5-132, 7-5-134, 7-5-135, and 7-5-137 or by a resolution of the governing body of the resort community; or

(b) a resort area by a resolution of the board of county commissioners, following receipt of a petition of electors as provided in 7-6-1508.

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the qualified electors in the resort area of each county.

(4) The petition or resolution referring the taxing question must state:

(a) the rate of the resort tax;

(b) the duration of the resort tax;

(c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) the purposes that may be funded by the resort tax revenue.

(5) On receipt of an adequate petition, the governing body shall hold an election in accordance with Title 13, chapter 1, part 5.

(6) (a) *Before the resort tax question is submitted to the electorate of a resort community or area, the governing body of the resort community or the board of county commissioners in the county in which the resort area is located shall provide notice of the goods and services subject to the resort tax by a method described in 13-1-108.*

(b) *The notice must be given two times, with at least 6 days separating the notices. The first notice must be no more than 45 days prior to the election, and the last notice must be no less than 30 days prior to the election.*

(6)(7) Notice of the election must be ~~accomplished~~ given as provided in 13-1-108 and include the information listed in subsection (4) of this section.

(7)(8) The question of the imposition of a resort tax may not be placed before the qualified electors more than once in any fiscal year.”

Section 5. Section 7-13-2212, MCA, is amended to read:

~~“7-13-2212. Qualifications to vote. (1) Except as provided in subsection (2), an individual is not entitled to vote at any election under the provisions of part 23 and this part unless the individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which the individual proposes to vote and situated within the boundaries of the proposed district.~~

~~(2) An individual who is the owner of the real property described in subsection (1) need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that the elector is qualified if registered to vote in any state of the United States and files proof of registration with the election administrator at least 40 days prior to the election in which the individual intends to vote: (1) An individual is qualified to vote in any election under the provisions of part 23 and this part if the individual is a qualified voter pursuant to 13-1-111, not including 13-1-111(1)(a) and (1)(c), and is:~~

~~(a) a resident of the proposed or existing district;~~

~~(b) an owner of taxable real property within the boundaries of the proposed or existing district or, if the property is owned by more than one person, an agent designated by the owners;~~

~~(c) an individual listed in 13-1-506 representing a corporation or company that owns taxable real property within the boundaries of the proposed or existing district; or~~

~~(d) a designated agent for a property held in trust within the boundaries of the proposed or existing district.~~

~~(2) An individual qualified to vote pursuant to subsections (1)(b) through (1)(d) shall provide written proof of the individual's qualifications to the election administrator at least 25 days before the election.”~~

Section 6. Section 13-1-101, MCA, is amended to read:

“13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Active elector” means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) “Active list” means a list of active electors maintained pursuant to 13-2-220.

(3) “Anything of value” means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) “Application for voter registration” means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) “Ballot” means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) (a) “Ballot issue” or “issue” means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a “ballot issue” upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a “ballot issue” upon preparation and transmission by

the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(13) (a) "Election administrator" means, *except as provided in subsection (13)(b)*, the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(b) *As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.*

(14) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

(iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees; or

(v) a communication that the commissioner determines by rule is not an election communication.

(15) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(v) a communication that the commissioner determines by rule is not an electioneering communication.

(16) "Elector" means an individual qualified to vote under state law.

(17) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(18) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(19) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

(20) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(21) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(22) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (22), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(23) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(24) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

(25) "Individual" means a human being.

(26) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(27) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(28) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

(29) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(30) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(31) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(32) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

(33) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

(34) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(35) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

(36) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(37) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(38) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(39) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

(40) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(41) "Regular school election" means the school trustee election provided for in 20-20-105(1).

(42) "School election" has the meaning provided in 20-1-101.

(43) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(44) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

(45) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(46) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

(47) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

(48) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(49) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

(50) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(52) "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

(53) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

Section 7. Section 13-1-403, MCA, is amended to read:

"13-1-403. Election deadlines for candidate filing, write-in candidacy, and withdrawal – election cancellation – election by acclamation. (1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections and except as provided in subsection (2) for a write-in candidate, the candidate filing deadline for election to a local government office is no sooner than 145 days and no later than 85 days before the election.

(2) ~~Consistent with the deadline for write-in candidates under 13-10-211 for primary elections, a~~ A declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the ~~10th~~ *65th* day before the date ~~on which the ballot must be available for absentee or mail ballot voting under 13-1-404, as applicable of the election.~~

(3) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).

(4) Except as provided in subsection (5)(b) and unless otherwise specifically provided by law, if the number of candidates filing for election is equal to or less than the number of positions to be filled, the election administrator shall notify the governing body in writing that the election is not necessary and the governing body may by resolution cancel the election.

(5) (a) If an election has been canceled and there is only one candidate for a position, the governing body shall declare the candidate elected to the position by acclamation.

(b) If an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body shall fill the position by appointment. The term of an appointed member must be the same as if the member were elected.”

Section 8. Section 13-1-404, MCA, is amended to read:

“13-1-404. Deadline for absentee ballots and mail ballots. (1) Pursuant to 13-13-205, ballots for a local government election must be:

(a) available for absentee voting *in person at least 30 days before election day; and*

(b) *mailed to absentee voters at least 25 days prior to a polling place election day.*

(2) Pursuant to 13-19-207, ballots *for a local government election conducted by mail* must be mailed no sooner than the 20th day and no later than the 15th day before election day ~~for an election conducted by mail.”~~

Section 9. Section 13-1-502, MCA, is amended to read:

“13-1-502. Deadlines for candidate filing, write-in candidacy, and withdrawal – election cancellation – election by acclamation.

(1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections and except as provided in subsection (3) for a write-in candidate, the candidate filing deadline for election to a special purpose district office is no sooner than 145 days and no later than 85 days before the election.

(2) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).

~~(3) Consistent with the deadline for write-in candidates under 13-10-211 for primary elections, a~~ A declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the ~~10th~~ *65th* day before the date ~~on which the ballot must be available for absentee or mail ballot voting under 13-1-503, as applicable of the election.~~

(4) ~~(a) If~~ Except as provided in subsection (4)(b), if by the write-in candidate deadline in subsection (3) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing body in writing of the cancellation. However, the governing body may by resolution require that the election be held.

~~(b) For an election of conservation district supervisors held in conjunction with a federal primary or federal general election, if by the candidate filing deadline under subsection (1) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and immediately notify the governing body in writing of the cancellation. However, the governing body may, by no later than 10 days after the candidate filing deadline, pass a resolution to require that the election be held.~~

(5) (a) If an election has been canceled and there is only one candidate for a position, the governing body shall declare the candidate elected to the position by acclamation.

(b) Except as otherwise provided by law:

(i) if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body shall fill the position by appointment;

(ii) an appointed member shall serve the same term as if the member were elected.”

Section 10. Section 13-2-301, MCA, is amended to read:

“13-2-301. Close of regular registration – notice – changes. (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) ~~except as provided in subsection (5),~~ publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An elector who misses the deadlines provided for in this section may register to vote or change the elector’s voter information and vote in the election, except as otherwise provided in 13-2-304.

~~(5) The method of a notice about the close of regular registration for a school election must be as specified in 20-20-204.”~~

Section 11. Section 13-3-213, MCA, is amended to read:

“13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot ~~as provided in 13-13-222~~ *in person at a designated voting station at the county election administrator’s office;* and

(c) prearranged assignment to an accessible polling place within the county.

(2) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place for the purpose of voting in the election;

(c) shall sign the elector’s name on a special addendum to the official precinct register as required in 13-2-601; and

(d) must receive the same ballot to which the elector is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.”

Section 12. Section 13-10-211, MCA, is amended to read:

“13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate under 13-38-201(4), a candidate may not file for more than one public office. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for

the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in *13-1-403*, *13-1-503*, *20-3-305(3)(b)*, and subsection (2) of this section, the declaration must be filed no later than 5 p.m. on the 10th day before the *earliest* date established under *13-13-205* on which a ballot must be available ~~for absentee voting for the election~~ and must contain:

- (a) the candidate's name, including:
 - (i) the candidate's first and last names;
 - (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
 - (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
 - (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not been canceled as provided by law.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(4) A properly completed and signed declaration of intent may be provided to the election administrator or secretary of state:

- (a) by facsimile transmission;
- (b) in person;
- (c) by mail; or
- (d) by electronic mail.

(5) A declaration is not valid until the filing fee required pursuant to *13-10-202* is received by the secretary of state or the election administrator.

(6) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

(7) Except as provided in *13-38-201(4)(b)*, the requirements in subsection (1) do not apply if:

- (a) an election is held;
- (b) a person's name is written in on the ballot;
- (c) the person is qualified for and seeks election to the office for which the person's name was written in; and
- (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 13. Section *13-13-205*, MCA, is amended to read:

“13-13-205. When ballots to be available for absentee voting. (1) Except as provided in subsection (2), the election administrator shall ensure that ballots for ~~an election not conducted by mail~~ *a polling place election* are available for absentee voting at least as follows:

- (a) *for an election conducted on a primary or general election day;*
- (i) ~~25 30 days prior to election day for an election not covered under subsection (1)(b) for absentee voting in person;~~
- (ii) *25 days prior to the election for mailing ballots to absentee voters; and*
- (b) 20 days prior to election day for a special purpose district or school district election, *except that ballots for a conservation district election held on a primary or general election day must be available as provided in subsection (1)(a).*

(2) A federal election ballot requested by an absent uniformed services or overseas elector pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed but not later than 45 days in advance of the election.”

Section 14. Section 13-13-222, MCA, is amended to read:

“13-13-222. Marking ballot in person before election day. (1) As soon as the official ballots are available ~~pursuant to~~ *for in-person absentee voting under 13-13-205(1)(a)(i)*, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) For the purposes of this section, an official ballot is voted when the ballot is received at the election administrator’s office.”

Section 15. Section 20-3-313, MCA, is amended to read:

“20-3-313. Election by acclamation – notice. (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under 20-3-305(2)(b) is equal to or less than the number of positions to be elected, the trustees may *cancel the election*.

(2) *If the election is canceled, the trustees shall give notice that a trustee election will not be held. Notice must be given no later than 30 days before the election.*

(2)(3) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate.

(3)(4) An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section.”

Section 16. Section 20-20-204, MCA, is amended to read:

“20-20-204. Election notice. (1) (a) When the trustees of a district call a school election, they shall give notice of the election not less than 10 days or more than 40 days before the election by:

(i) publishing a notice in a newspaper of general circulation if there is one in the district;

(ii) posting notices in three public places in the district; and

(iii) posting notice on the district’s website, if the district has an active website, for 10 days prior to the election.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication or broadcast of the

school election notice by any recognized media organization in the district, the trustees may cause the supplemental notification to be made.

(2) The notice of a school election, unless otherwise required by law, must specify:

- (a) the date and polling places of the election;
 - (b) the hours that the polling places will be open;
 - (c) each proposition to be considered by the electorate;
 - (d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and
 - (e) where and how absentee ballots may be obtained; and
 - (f) *where and how late registrants may obtain a ballot on election day.*
- (3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices.”

Section 17. Section 85-7-1702, MCA, is amended to read:

“85-7-1702. Election or appointment of commissioners – term of office.

(1) The election for commissioners in each district must be held annually in accordance with Title 13, chapter 1, part 5. *The election may be at the district’s annual meeting or on the date established in 13-1-504(1).*

(2) A person eligible to vote in the district may file a declaration of candidacy for the office of commissioner with the election administrator or deputy election administrator within the time period specified in 13-1-502.

(3) Within 40 days following their election, the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, who shall each hold office at the pleasure of the board.

(4) *The Except as provided in 85-7-204, the term of office of each commissioner begins on the date of the commissioner’s election and continues for 3 years.*

~~(4)~~(5) Commissioners are elected by the electors of the entire district.”

Section 18. Transition – special purpose district officers – terms of office – retroactive applicability. An officer of a special purpose district, as defined in 13-1-101, who was elected or appointed to a term of office that would otherwise have expired prior to the school election immediately following the expiration of the officer’s term shall serve until the election or appointment of a successor under the laws effective on and after November 4, 2015, that provide for the special purpose district election to be held on the same day as the regular school election in May. This section applies retroactively, within the meaning of 1-2-109, to the terms of office for special purpose district officers elected before November 4, 2015.

Section 19. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2017

CHAPTER NO. 243

[HB 99]

AN ACT LIMITING ANALYSIS OF ADVERSE EFFECTS FOR CERTAIN WATER RIGHT APPLICATIONS; ALLOWING WATER RIGHT HOLDERS TO CONSENT TO APPROVAL OF CERTAIN WATER RIGHT APPLICATIONS; AMENDING SECTIONS 85-2-306, 85-2-311, 85-2-320, 85-2-360, 85-2-402, 85-2-407, AND 85-2-408, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

“85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person’s intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for

correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators. *For purposes of an adverse effects determination under this subsection, the department may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to 85-2-311.*

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant

has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.”

Section 2. Section 85-2-311, MCA, is amended to read:

“85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant’s plan for the exercise of the permit that demonstrates that the applicant’s use of the water will be controlled so the water right of a prior appropriator will be satisfied; *The applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed pursuant to subsection (9) in connection with a permit application.*

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) For an application for ground water in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, the applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section.

(9) *The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a permit. However, the department shall determine if water is legally available to satisfy the proposed use.*

Section 3. Section 85-2-320, MCA, is amended to read:

"85-2-320. Change in appropriation right authorization for instream flow – United States department of agriculture, forest service. (1) (a) The department shall accept and process an application by the United States department of agriculture, forest service for a change in appropriation right under the provisions of 85-2-402 and this section to protect, maintain, or enhance streamflows to benefit the fishery or other resources on national forest system lands.

(b) To change an appropriation right, the United States department of agriculture, forest service must own the appropriation right that it seeks to change to an instream flow right, the diversion or withdrawal that is to be changed to instream flow must be located within or immediately adjacent to the exterior boundaries of national forest system lands on the date provided in 85-20-1401, Article IV.B.2., and the stream reach in which the streamflow is to be protected, maintained, or enhanced must be located within or immediately adjacent to the exterior boundaries of national forest system lands as of the

date provided in 85-20-1401, Article IV.B.2. The application for a change in appropriation right must:

(i) include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced; and

(ii) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) In addition to the requirements of 85-2-402, when applying for a change in appropriation right pursuant to this section, the United States department of agriculture, forest service, shall prove by a preponderance of the evidence that:

(a) the change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources, as measured at a specific point, will not adversely affect the water rights of other persons, *except for a water right identified in a written consent to approval filed pursuant to 85-2-402 in connection with the change in appropriation right*; and

(b) the amount of water for the proposed instream flow use is needed to protect, maintain, or enhance streamflows to benefit the fishery or other resources.

(3) The proposed method of measurement of the water to protect, maintain, or enhance streamflows to benefit the fishery or other resources must be approved by the department before a change in appropriation right may be approved.

(4) The department is not responsible for costs associated with installing devices or providing personnel to measure streamflows according to the measurement plan submitted under this section.

(5) If an appropriation right is changed pursuant to this section, the priority of the appropriation right remains the same as the appropriation right that was changed.

(6) A change in appropriation right authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7) The maximum quantity of water that may be subject to a change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources is the amount historically diverted. However, only the amount historically consumed or a smaller amount if specified by the department in the change in appropriation right authorization may be used to protect, maintain, or enhance streamflows to benefit the fishery or other resources below the existing point of diversion.

(8) The department may modify or revoke the change in appropriation right up to 10 years after it is approved if an appropriator with a priority of appropriation that is earlier than the change in appropriation right that was granted submits new evidence that was not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected, *unless the prior appropriator has filed a written consent to approval pursuant to 85-2-402 in connection with the change.*"

Section 4. Section 85-2-360, MCA, is amended to read:

"85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 must be accompanied by a hydrogeologic report conducted pursuant to 85-2-361, an aquifer recharge or mitigation plan if required, and an application for a change in appropriation right or rights if necessary.

(2) The department shall use the hydrogeologic report to determine if the proposed appropriation right could result in a net depletion of surface water.

(3) (a) For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the rate, location, and timing of the net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(b) *The department may not consider an adverse effect caused by the grant of an application pursuant to this section on any water right listed on a written consent to approval filed pursuant to 85-2-311.*

(b)(c) The department may grant a permit for a new appropriation only if the applicant proves by a preponderance of the evidence that the adverse effect would be offset through an aquifer recharge or mitigation plan that meets the requirements of 85-2-362.”

Section 5. Section 85-2-402, MCA, is amended to read:

“85-2-402. Changes in appropriation rights – definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) *The applicant is not required to prove a lack of adverse effect for any water right identified on a written consent to approval filed pursuant to subsection (19) in connection with an application.*

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to ~~subsection (17)~~ subsections (1)(c) and (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons, *except for any right for which a written consent to approval has been filed pursuant to subsection (19) in connection with the application.*

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312.

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;
or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance

streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.

(19) The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a change in appropriation right."

Section 6. Section 85-2-407, MCA, is amended to read:

"85-2-407. Temporary changes in appropriation right. (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. There is no limitation on the number of renewals the appropriator may seek. Renewal of an authorization for a temporary change in appropriation right requires notice to the department by the appropriator. Upon receipt of the notice, the department shall notify other appropriators potentially affected by the renewal and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, ~~other than an appropriator described in subsection (7);~~ is adversely affected, *except for an appropriator described in subsection (7) or a right identified in a written consent to approval filed pursuant to 85-2-402 in connection with a temporary change.*

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, ~~other than an appropriator described in subsection (7);~~ is adversely affected, *except for an appropriator described in subsection (7) or a right identified in a written consent to approval filed pursuant to 85-2-402 in connection with a temporary change.*

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- (i) during the initial temporary change application process;
- (ii) during the temporary change renewal process; and
- (iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change in appropriation right has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change in appropriation right is made available from the development of a new water conservation or storage project, a temporary change in appropriation right may be approved for a period not to exceed 30 years unless a renewal is obtained pursuant to subsection (3)."

Section 7. Section 85-2-408, MCA, is amended to read:

"85-2-408. Temporary change authorization for instream flow – additional requirements. (1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of 85-2-402, 85-2-407, and this section. The application must:

(a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and

(b) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:

(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or

(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.

(b) For the purpose of this subsection (2), "person" means and is limited to an individual, association, partnership, or corporation.

(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

(4) *The applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed pursuant to 85-2-402 in connection with a change application.*

~~(4)~~(5) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

(5)(6) Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

(6)(7) A temporary change authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7)(8) The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion.”

Section 8. Termination. [This act] terminates September 30, 2023.

Approved May 3, 2017

CHAPTER NO. 244

[HB 126]

AN ACT GENERALLY REVISING THE MONTANA PESTICIDES ACT; REVISING PESTICIDE REGISTRATION REQUIREMENTS; REVISING CERTAIN DEFINITIONS, FEES, AND REQUIREMENTS FOR COMMERCIAL APPLICATORS, COMMERCIAL OPERATORS, DEALERS, FARM APPLICATORS, AND GOVERNMENT AGENCIES; PROVIDING FOR ADDITIONAL FEES FOR CERTAIN CERTIFICATION AND TRAINING PROGRAMS; CLARIFYING PESTICIDE DEALER REQUIREMENTS; REVISING THE METHODS OF SAMPLING AND ANALYSIS; EXTENDING THE INTEGRATED PEST AND PESTICIDE MANAGEMENT SAFETY PROGRAM TO OTHER FACILITIES; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 80-8-102, 80-8-107, 80-8-111, 80-8-201, 80-8-203, 80-8-207, 80-8-209, 80-8-213, 80-8-302, 80-8-303, 80-8-401, 80-8-404, AND 80-15-302, MCA; REPEALING SECTION 80-8-214, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-102, MCA, is amended to read:

“80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Active ingredient” means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) “Adulterated” applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide,

or if any valuable constituent of the pesticide has been wholly or in part abstracted.

~~(3)~~ “Antidote” means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

~~(4)~~(3) “Applicator” means a person who applies pesticides by any method.

~~(5)~~ “Beneficial insects” means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(4) “Beneficial insects” means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

~~(6)~~(5) “Commercial applicator” means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

~~(7)~~(6) “Commercial operator” means a person who applies pesticides under the supervision of a commercial applicator.

~~(8)~~(7) “Crop” means a food intended for human or animal consumption or a fiber product.

~~(9)~~(8) “Dealer” means a person who sells, wholesales, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden, ~~home orchard, shade trees, ornamental trees, bushes, and lawn.~~

~~(10)~~(9) “Defoliant” means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

~~(11)~~(10) “Desiccant” means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

~~(12)~~(11) (a) “Device” means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests.

(b) The term does not include equipment used for the application of pesticides.

~~(13)~~(12) “Environment” means the soil, air, water, plants, and animals.

~~(14)~~(13) “Equipment” means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

~~(15)~~(14) “Farm applicator” means a person applying pesticides to the person’s own crops or land.

~~(16)~~(15) “Fungi” means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, *and* yeasts, ~~and bacteria~~; except those resident on or in living humans or other animals.

~~(17)~~ “Fungicide” means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

~~(18)~~(16) “Herbicide” means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

~~(19)~~(17) “Inert ingredient” means an ingredient that is not an active ingredient.

~~(20)~~(18) “Ingredient statement” means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection ~~(20)~~(a) (18)(a) applies if the preparation is highly toxic to humans, determined as provided in 80-8-105;

~~and~~ *if*. If the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

~~(21)~~(19) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

~~(22)~~(20) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

~~(23)~~(21) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

~~(24)~~(22) "Labeling" means all labels and other written, printed, or graphic matter:

(a) ~~upon~~ *on* the pesticide or device or any of its containers or wrappers;
(b) accompanying the pesticide or device at any time;
(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of:

(i) the United States environmental protection agency;
(ii) federal departments of agriculture, interior, or health and human services;

(iii) state experiment stations;

(iv) state agricultural colleges; or

(v) other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

~~(25)~~(23) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling ~~bears any reference to registration under this chapter~~ *fails to bear the necessary information required by this chapter*;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public ~~that when followed provide adequate public protection~~;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, ~~nematocide~~ *nematicide*, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means ~~invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.~~

(28)(24) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29)(25) "Pest" ~~includes any insect, rodent, nematode, snail, slug, or weed and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest~~ *includes any insect, rodent, nematode, snail, slug, or weed and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.*

(30)(26) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule ~~adopted by it.~~

(31)(27) (a) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants.

(b) The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32)(28) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33)(29) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34)(30) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department *or the environmental protection agency* has found and determined, ~~subsequent to a hearing~~, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons,

beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

~~(35)~~(31) "Retailer" means a person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use in quantities or concentrations as determined by the department.

~~(36)~~(32) "Waste pesticide" means a pesticide that:

(a) may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) cannot be disposed of in a legal or economically feasible manner.

~~(37)~~(33) "Weed" means any plant or part of the plant that grows where it is not wanted."

Section 2. Section 80-8-107, MCA, is amended to read:

"80-8-107. Notice – public information. (1) As used in this section, the following definitions apply:

(a) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.

(b) "Public building" means a building that is owned or leased by a public agency, as defined in 18-1-101, and that is open to the public, including but not limited to:

(i) a building that is used for educational, office, or institutional purposes;

or

(ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air-conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:

(a) be permanently displayed if the pesticide is applied on a regular basis;

(b) be posted at the time of the application if the pesticide is not applied on a regular basis;

(c) contain the name of the pesticide applied; and

(d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.

(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.

(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).

(6) (a) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other state or federal agencies, publish information

regarding aspects of the use and application sections or registration sections of this chapter. This information ~~cannot~~ *may not* disclose operations of selling, production, or use of pesticides by any person.

(b) When designating a pesticide as a state restricted-use pesticide, the department shall list the state restricted-use pesticide by rule.”

Section 3. Section 80-8-111, MCA, is amended to read:

“80-8-111. Waste pesticide and pesticide container collection, disposal, and recycling program. (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program.

(3) (a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

~~(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collection, disposal, and recycling program and who are subject to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees levied pursuant to 80-8-105(2)(s), provided that:~~

~~(a) the credit does not exceed the amount of the license or permit fee paid by the applicator, dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and~~

~~(b) each applicator, dealer, or operator may receive only one credit for each permit or license period.~~

~~(6)(5) The department shall consult affected local governments before implementing the collection program under this section.”~~

Section 4. Section 80-8-201, MCA, is amended to read:

“80-8-201. Registration. (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the *pesticide* label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide; *and*

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in 80-8-105(3) and in subsection (8) (9) of this section. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) (a) The applicant shall pay an annual *pesticide registration* fee of \$90 for each pesticide registered. The applicant shall pay an annual fee of \$90 for:

(i) each pesticide registered;

(~~a~~)(ii) each emergency exemption requested by the state, as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p;

(~~b~~)(iii) a each special local need registration, as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c)(1); or *and*

(~~c~~)(iv) an each experimental-use permit registration, as provided in 7 U.S.C. 136c.

(b) *The annual pesticide registration fee may not be less than \$130 a year or more than \$145 a year. The department may adjust by rule the registration fee to maintain adequate funding for the purposes of this chapter.*

(5) (a) *The department shall assess a special needs fee for each pesticide registered, emergency exemption requested, special local need registration, or experimental-use permit registration to be used for the Montana state university extension service pesticide education program for the purpose of coordinating the certification and training of farm applicators.*

(b) *The department may adjust by rule the special needs fee to maintain adequate funding for farm pesticide applicator certification and training programs. The fee may not be less than \$8 a year or more than \$11 a year.*

(~~5~~)(6) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(~~6~~)(7) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the

registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7)(8) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8)(9) (a) The department, the department of public health and human services, and the department of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The departments shall use the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department shall provide the departments of public health and human services and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department's proposed action on the application. The department, the department of public health and human services, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the department, the department of public health and human services, and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue the registration.

(b) The department shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department ~~shall~~ *may* issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, public health and human services, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of ~~any~~ *the pesticide or device*. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(9)(10) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b) (10)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5), may be sold and used according to ~~environmental protection agency~~ labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated.”

Section 5. Section 80-8-203, MCA, is amended to read:

“80-8-203. Commercial applicator. (1) It is unlawful for a person to engage in the business of applying pesticides for another without a pesticide applicator’s license obtained from the department of agriculture. An application for a pesticide applicator’s license must be accompanied by a fee of ~~45~~ \$75. The provisions of this subsection do not apply to a person employed only to operate equipment used for the application of a pesticide if the person has no financial interest or other control over the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided in 80-8-205.

(3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to ~~be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules~~ *be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules in relation to transactions and activities of a veterinary practice.*

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator’s supervision or employment.

(5) The department shall assess an additional annual license fee of \$10 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.”

Section 6. Section 80-8-207, MCA, is amended to read:

“80-8-207. Dealers. (1) A person may not sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer’s license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of the dealer’s field personnel and salespeople selling pesticides within the state.

(2) *The department shall require an applicant for a dealer’s license to show, upon written examination, that the person possesses adequate knowledge related to the responsibilities of a pesticide dealer. Licensed dealers are not required to repeat an examination to renew their license provided they have earned the required recertification credits for renewal of that license.*

~~(2)(3)~~ (3) The application for a license must be accompanied by a fee of ~~45~~ \$75. A dealer applying for renewal of a license shall apply on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a \$25 late licensing fee.

~~(3)~~(4) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(4)(5) The department shall assess an additional annual license fee of \$10 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in an account in the state special revenue fund pursuant to 80-8-112.

~~(5)~~(6) Pharmacists licensed as provided for in 37-7-302, veterinarians licensed as provided for in 37-18-302, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides if the certified pharmacies and veterinarians register with the department each year. ~~However, the certified pharmacies and veterinarians must meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules if the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians must meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules.~~

Section 7. Section 80-8-209, MCA, is amended to read:

"80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is ~~35~~ \$45. The special-use permit is effective for 5 calendar years. The department may establish a staggered years system of issuing permits. Revenue generated by the permit fee must be expended in the following manner:

- (a) \$15 to the department to administer the permitting program;
- (b) \$5 to the Montana state university-Bozeman extension service: ~~for the development of educational materials for farm pesticide applicators~~
 - (i) *to train extension service agents regarding farm pesticide applicator certification and training; and*
 - (ii) *to operate farm pesticide applicator certification and training programs;*

and

- (c) ~~15~~ \$25 to the *cooperative* extension service of the county in which the permit applicant resides for *conducting* farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting an agricultural commodity on property owned, leased, or rented by the applicator.

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination, or attending a training course approved by the department and *then* taking an ungraded written examination. The examinations and course must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending an approved training program. The department shall establish by rule a uniform system of administering the requalification training program. The department may credit only training related to the standards set forth in subsection ~~(3)~~ (4).

(6) Provisions of this chapter relating to certification of farm applicators do not apply to a farm applicator applying nonrestricted pesticides on the applicator's own land or on lands of neighbors if the farm applicator:

(a) operates farm property and operates and maintains pesticide application equipment primarily for the applicator's own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not represent to the public that the farm applicator is a pesticide applicator;

(c) operates pesticide application equipment only in the vicinity of the applicator's own property and for the accommodation of immediate neighbors.

(7) (a) The department shall assess an additional permit fee of \$15 on farm applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period. The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit renewal period.

(c) Fees collected under this subsection (7) must be deposited in the state special revenue account pursuant to 80-8-112."

Section 8. Section 80-8-213, MCA, is amended to read:

"80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of 80-8-203 through ~~80-8-208~~ 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of \$50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay for each of its first four employee applicators:

(i) an annual applicator's fee of ~~\$50~~ \$60; and

(ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.

(b) A governmental agency shall pay for each additional employee applicator:

(i) an annual applicator's fee of \$5; and

(ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.

(c) A government agency may not be required to pay more than \$600 \$895 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to 80-8-112.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing the courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee.”

Section 9. Section 80-8-302, MCA, is amended to read:

“80-8-302. Sampling and analysis. (1) The department shall have the authority to sample, inspect, ~~make analysis of and analyze~~ pesticides or devices distributed within this state ~~at such time and place and to such extent as it may deem wherever and whenever and to the extent~~ necessary to determine whether ~~such the~~ pesticides or devices are in compliance with the provisions of this chapter. The department is authorized with a warrant or the consent of the inhabitant or owner to enter ~~upon any public or private premises, including any vehicle of transport in order~~ vehicles, to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis ~~shall be those adopted by the department from sources such as the Journal of the Association of Official Analytical Chemists must be based on:~~

(a) *validated methods for the laboratory; and*

(b) *standard methods and guidance for the sampling.*

(3) In all administrative or legal actions involving the composition, identification, or quantification of a pesticide, a certified copy of the official analysis signed by the department’s authorized chemist ~~shall must be accepted as prima facie evidence of the determinations set forth therein the official analysis contains.”~~

Section 10. Section 80-8-303, MCA, is amended to read:

“80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of ~~80-8-201(5)~~ 80-8-201, fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, the agent shall affix to the article a tag or other appropriate marking giving notice of the failure and stating that the article has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. A person who removes or disposes of a detained or embargoed article by sale or otherwise without prior permission or who removes or alters the tag or marking is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.

(2) When an article detained or embargoed under subsection (1) has been found by the agent to be in violation of subsection (1) and after 30 days the violation has not been resolved, the agent may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of

the article. When the agent has found that an article detained or embargoed is not adulterated or misbranded, the agent shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted under this chapter, the article must after entry of the decree be destroyed at the expense of the claimant of the article, under the supervision of the agent, and all court costs and fees and storage and other proper expenses must be assessed against the claimant of the pesticide or device or the claimant's agent. However, when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of the pesticide or device, may by order direct that the article be delivered to the claimant of the article for labeling or processing under the supervision of an agent of the department. The expense of supervision must be paid by the claimant. The article must be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of supervision have been paid."

Section 11. Section 80-8-401, MCA, is amended to read:

"80-8-401. Short title. This part may be cited as the "Model School Integrated Pest and Pesticide Management Safety Program Act"."

Section 12. Section 80-8-404, MCA, is amended to read:

"80-8-404. Model school integrated pest and pesticide management safety program. (1) The department shall develop a model school integrated pest and pesticide management safety program and distribute the program to school districts by July 1, 1994 *may develop a model integrated pest and pesticide management safety program for facilities under supervision, including but not limited to schools, day-care facilities, nursing homes, hospitals, and other education and health care facilities.* The model program programs must provide guidance and recommendations to school districts on management of pests and pesticides and on alternatives within schools and on school grounds a facility and on facility grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting school children *the affected populations* from exposure to pesticides and *from* the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting school children *the affected populations* from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, school facility personnel, and the public on any aspect of the model school integrated pest and pesticide management safety program."

Section 13. Section 80-15-302, MCA, is amended to read:

"80-15-302. Special funding. (1) A fee of \$95 is assessed for the registration of pesticides in addition to the fee imposed by ~~80-8-201(4)~~ *80-8-201*.

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited \$15,000 for purposes of administering or assisting the department in administering this chapter:

- (i) department of environmental quality; and
- (ii) Montana state university-Bozeman extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of \$10 is assessed for the registration of fertilizers in addition to the fees imposed by 80-10-201(1)(a)(i) and (1)(a)(ii). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department.”

Section 14. Repealer. The following section of the Montana Code Annotated is repealed:

80-8-214. Liability.

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 14] is effective October 1, 2019.

Approved May 3, 2017

CHAPTER NO. 245

[HB 142]

AN ACT PROVIDING PARITY BETWEEN MENTAL HEALTH AND PHYSICAL HEALTH INSURANCE COVERAGE IN GROUP, INDIVIDUAL, HEALTH MAINTENANCE ORGANIZATION, AND MULTIPLE EMPLOYER WELFARE ARRANGEMENT PLANS AND POLICIES, INCLUDING STATE, LOCAL GOVERNMENT, AND MONTANA STATE UNIVERSITY PLANS AND POLICIES; REVISING DEFINITIONS; EXTENDING RULEMAKING AUTHORITY; REPEALING LIMITED POLICY APPLICATIONS; AMENDING SECTIONS 2-18-704, 33-22-701, 33-22-702, 33-22-703, 33-22-705, 33-31-111, AND 33-35-306, MCA; REPEALING SECTIONS 33-22-704 AND 33-22-706, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE .

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

“2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the

member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for:

(a) treatment of inborn errors of metabolism, as provided for in 33-22-131; and

(b) therapies for Down syndrome, as provided in 33-22-139.

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to

provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a \$250 benefit for a person each year for educationally necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

(e) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as is available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan.

The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law.

(14) The state employee group benefit plans and the Montana university system group benefits plans must comply with the provisions of 33-22-153.

(15) *An insurance contract or plan issued under this part and a group benefits plan issued by the Montana university system must provide mental health coverage that meets the provisions of Title 33, chapter 22, part 7. (See compiler's comments for contingent termination of certain text.)*

Section 2. Section 33-22-701, MCA, is amended to read:

“33-22-701. Scope *Short title – purpose – scope of part – purpose – exception exceptions.* (1) *This part may be cited as the “Montana Mental Health Parity Act”.*

(2) *The purpose of this part is to ensure that Montana law applies the same level of parity between mental health and physical health benefits as existed in federal law on January 1, 2017.*

(3) ~~Except as provided in 33-22-706, the provisions of this part apply to all group policies and certificates of accident~~ *individual and group health insurance and group subscriber contracts for the care and treatment of mental illness, alcoholism, and drug addiction health plans offered to, renewed for, or issued to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and any health insurance issuer benefits to residents of this state. It is the purpose of this part to preserve the rights of the consumer to have this coverage according to the consumer's medical and economic needs.*

(4) *This part does not apply to a short-term travel policy, a blanket disability policy as defined in 33-22-601, or excepted benefits as defined in 33-22-140.”*

Section 3. Section 33-22-702, MCA, is amended to read:

“33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) “Chemical dependency treatment center” means a treatment facility that:

(a) ~~provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or addiction counselor licensed by the state; and~~

(b) ~~is licensed or approved as a treatment center by the department of public health and human services under 53-24-208 or is licensed or approved by the state where the facility is located.~~

(2)(1) “Inpatient benefits” are as set forth in 33-22-705.

(3)(2) “Mental health treatment center” means a treatment facility organized to provide care and treatment for mental illness *or severe mental illness* through multiple modalities or techniques pursuant to a written

treatment plan approved and monitored by ~~an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, a qualified health care provider~~ and a treatment facility that is:

- (a) licensed as a mental health treatment center by the state;
- (b) funded or eligible for funding under federal or state law; or
- (c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

~~(4)~~(3) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

- (i) present distress or a painful symptom;
- (ii) a disability or impairment in one or more areas of functioning; or
- (iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

- (i) a developmental disorder;
- (ii) a speech disorder;
- (iii) a psychoactive substance use disorder;
- (iv) an eating disorder, except for bulimia and anorexia nervosa; or
- (v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania; or

~~(vi) a severe mental illness as provided in 33-22-706.~~

~~(5)~~(4) "Outpatient benefits" are as set forth in 33-22-705.

(5) "*Qualified health care provider*" means a person licensed as a physician, psychologist, social worker, clinical professional counselor, marriage and family therapist, or addiction counselor or another appropriate licensed health care practitioner.

(6) "*Severe mental illness*" means the following disorders as defined by the American psychiatric association:

- (a) schizophrenia;
- (b) schizoaffective disorder;
- (c) bipolar disorder;
- (d) major depression;
- (e) panic disorder;
- (f) obsessive-compulsive disorder; and
- (g) autism.

(7) (a) "*Substance use disorder*" means the uncontrollable or excessive use of an addictive substance, including but not limited to alcohol, morphine, cocaine, heroin, opium, cannabis, barbiturates, amphetamines, tranquilizers, or hallucinogens, and the resultant physiological or psychological dependency that develops with continued use of the addictive substance and that requires medical care or other appropriate treatment as determined by a licensed addiction counselor or other appropriate medical practitioner.

(8) "*Substance use disorder treatment center*" means a treatment facility that:

(a) provides a program for the treatment of substance use disorders pursuant to a written treatment plan approved and monitored by a qualified health care provider; and

(b) is licensed or approved by the department of public health and human services under 53-24-208 or is licensed or approved by the state where the facility is located."

Section 4. Section 33-22-703, MCA, is amended to read:

“33-22-703. Coverage for mental illness, alcoholism, and drug addiction severe mental illness, and substance use disorders – definition. (1) A group health plan or a health insurance issuer that provides issues, modifies, or renews individual or group health insurance coverage or a group health plan shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction severe mental illness, and substance use disorders at a level of benefits that is no less favorable than the level provided for physical illness generally, including:

- (a) inpatient benefits;
- (b) outpatient benefits;
- (c) emergency care; and
- (d) prescription drugs:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the association for ambulatory behavioral healthcare if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of \$6,000 for a 12-month period until a lifetime maximum inpatient benefit of \$12,000 is met, after which the annual benefit may be reduced to \$2,000; and

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the association for ambulatory behavioral healthcare if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of \$6,000 for a 12-month period until a lifetime maximum inpatient benefit of \$12,000 is met, after which the annual benefit may be reduced to \$2,000;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c); and

(e) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than \$2,000, but this subsection (2)(e) does not apply to benefits for services furnished before September 30, 2001.

(2) For the purposes of this section, “no less favorable” means the same level of parity as required under the Mental Health Parity and Addiction Equity Act of 2008 and related federal regulations as of January 1, 2017.

(3) Coverage for a child with autism who is 18 years of age or younger must comply with 33-22-515(3) through 33-22-515(5) if the child is diagnosed with:

- (a) autistic disorder;
- (b) Asperger’s disorder; or
- (c) pervasive developmental disorder not otherwise specified.”

Section 5. Section 33-22-705, MCA, is amended to read:

“33-22-705. Inpatient and outpatient benefits. (1) (a) “Inpatient benefits” are benefits payable for charges made by:

(i) a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, ~~alcoholism, or drug addiction~~ *severe mental illness, or substance use disorder* furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by; or

(ii) a ~~physician~~ *qualified health care provider* for the necessary care and treatment of mental illness, ~~alcoholism, or drug addiction~~ *severe mental illness, or substance use disorder* furnished to a covered person while confined as an inpatient.

(b) Care and treatment of ~~alcoholism or drug addiction~~ *a substance use disorder* in a freestanding inpatient facility must be in a ~~chemical dependency substance use disorder treatment center that is approved by the department of public health and human services under 53-24-208.~~

(c) Inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services.

(2) “Outpatient benefits” are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, ~~alcoholism, or drug addiction~~ *severe mental illness, or substance use disorder* furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a ~~physician~~ *qualified health care provider* for the necessary care and treatment for mental illness, ~~alcoholism, or drug addiction~~ *severe mental illness, or substance use disorder* furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or ~~chemical dependency substance use disorder~~ *substance use disorder* treatment center for the necessary care and treatment of a covered person provided in the treatment center *while not confined as an inpatient; or: The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208.*

(d) reasonable charges for services rendered by a ~~licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or addiction counselor licensed by the department of labor and industry under Title 37, chapter 35~~ *qualified health care provider, hospital, mental health treatment center, or substance use disorder treatment center in an acute or subacute partial hospitalization or intensive outpatient treatment setting.”*

Section 6. Rulemaking. The commissioner may adopt rules to implement the provisions of this part.

Section 7. Section 33-31-111, MCA, is amended to read:

“33-31-111. Statutory construction and relationship to other laws.

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an

insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, ~~part 19~~ *parts 7 and 19*;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, 33-22-706, Title 33, chapter 32[, and Title 33, chapter 40, part 1,] apply to health maintenance organizations. (Bracketed language in (7) terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)”

Section 8. Section 33-35-306, MCA, is amended to read:

“33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) 33-3-308;

(e) Title 33, chapter 18, except 33-18-242;

(f) Title 33, chapter 19;

(g) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153;

(h) 33-22-512, 33-22-515, 33-22-525, and 33-22-526; ~~and~~

(i) *Title 33, chapter 7; and*

(~~i~~)*(j)* Title 33, chapter 40, part 1.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been

issued a certificate of authority that has not been revoked. (Subsection (1)(i) (1)(j) terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)”

Section 9. Repealer. The following sections of the Montana Code Annotated are repealed:

33-22-704. Applicability.

33-22-706. Coverage for severe mental illness -- definition.

Section 10. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 33, chapter 22, part 7, and the provisions of Title 33, chapter 22, part 7, apply to [section 6].

Section 11. Effective date. [This act] is effective January 1, 2018.

Approved May 3, 2017

CHAPTER NO. 246

[HB 148]

AN ACT GENERALLY REVISING LAWS RELATED TO ELECTRONIC COMMUNICATIONS; PROVIDING DEFINITIONS; REQUIRING A SEARCH WARRANT FOR DISCLOSURE OF ELECTRONIC COMMUNICATIONS BY A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE; REQUIRING NOTICE BE GIVEN TO A CUSTOMER OF AN ELECTRONIC COMMUNICATION SERVICE IF THE CONTENTS OF AN ELECTRONIC COMMUNICATION ARE GIVEN TO A GOVERNMENTAL ENTITY; ALLOWING DELAYED NOTICE UNDER CERTAIN CIRCUMSTANCES; DISALLOWING CERTAIN EVIDENCE IN CERTAIN PROCEEDINGS; ALLOWING THE ATTORNEY GENERAL TO COMMENCE CIVIL ACTIONS AGAINST GOVERNMENTAL ENTITIES TO COMPEL COMPLIANCE; ALLOWING A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE STANDING TO CHALLENGE CERTAIN WARRANTS; AND ALLOWING VOLUNTARY DISCLOSURE OF ELECTRONIC COMMUNICATION INFORMATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) “Contents” means any information concerning the substance, purport, or meaning of a communication.

(2) “Electronic communication” means:

(a) any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system; or

(b) any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other similar connection between the point of origin and the point of reception, including but not limited to the use of the wire, cable, or other similar connection in a switching station.

(c) The term does not include:

(i) an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation;

(ii) a communication made through a tone-only paging device;

(iii) a communication from a tracking device, including an electronic or mechanical device that permits the tracking of the movement of a person or object; or

(iv) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(3) "Electronic communication service" means:

(a) a service that provides to users the ability to send or receive electronic communications;

(b) a service that provides to users computer storage or processing services; or

(c) a service that acts as an intermediary in the transmission of electronic communications.

(4) "Governmental entity" means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.

Section 2. Search warrant or investigative subpoena required. A governmental entity may only require disclosure by a provider of an electronic communication service of the contents of an electronic communication stored, held, or maintained by that service pursuant to a search warrant or investigative subpoena issued by a court upon a finding of probable cause pursuant to Title 46, chapter 5, part 2, or Title 46, chapter 4, part 3.

Section 3. Notice – delayed notice. (1) At or before the time that a governmental entity receives the contents of an electronic communication of a subscriber or customer from a provider of an electronic communication service pursuant to [section 2], the governmental entity shall serve upon or deliver to the subscriber or customer by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective, as specified by the court issuing the warrant or investigative subpoena:

(a) a copy of the warrant or investigative subpoena; and

(b) notice that informs the customer or subscriber:

(i) of the nature of the government inquiry with reasonable specificity;

(ii) that information maintained for the customer or subscriber by the provider of the electronic communication service named in the process or request was supplied to or requested by the governmental entity; and

(iii) of the date on which the warrant or investigative subpoena was served on the provider.

(2) (a) A governmental entity that is seeking a warrant or investigative subpoena under [section 2] may include in the application for the warrant or investigative subpoena a request for an order delaying the notification required under subsection (1) of this section for a period of not more than 1 year.

(b) A governmental entity that is obtaining the contents of an electronic communication may apply to a court for an order directing the provider of an electronic communication service to which a warrant or investigative subpoena under [section 2] is directed not to notify any other person of the existence of the warrant or investigative subpoena for a period of not more than 1 year.

(c) A court shall grant a request for delayed notification made under subsection (2)(a) or (2)(b) if the court determines that there is reason to believe that notification of the existence of the warrant or investigative subpoena may result in:

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(d) Upon request by a governmental entity, a court may grant one or more extensions of the delay of notification granted under subsection (2)(c) of not more than 180 days each.

(e) Upon expiration of the period of delay under subsection (2)(c) or (2)(d), the governmental entity shall serve upon or deliver to the subscriber or customer by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective, as specified by the court issuing the warrant or investigative subpoena, a notice that:

(i) includes the information referred to in subsection (1); and

(ii) informs the customer or subscriber:

(A) that notification of the customer or subscriber was delayed;

(B) of the identity of the court authorizing the delay; and

(C) of the provision of subsection (2)(c) under which the delay was authorized.

(3) (a) A warrant or investigative subpoena under [section 2] may be served only on a provider of an electronic communication that is a domestic entity or a company or entity otherwise doing business in this state under a contract or a terms of service agreement with a resident of this state if any part of that contract or agreement is to be performed in this state.

(b) The provider of an electronic communication shall produce all electronic customer data, contents of communications, and other information sought by the governmental entity pursuant to a valid warrant or investigative subpoena.

Section 4. Rules of construction. (1) Except as expressly provided, nothing in [sections 1 through 8] may be construed to limit an electronic communication service or any other party from disclosing information about a request issued by a governmental entity for electronic communication information.

(2) Nothing in [sections 2 and 3] may be construed to limit the authority of a governmental entity to use a subpoena authorized under the laws of this state to require an entity that provides electronic communication services to its own officers, directors, employees, or agents for the purpose of carrying out their duties to disclose to the governmental entity the contents of an electronic communication to or from an officer, director, employee, or agent of the entity, if the electronic communication is held, stored, or maintained on an electronic communication service owned or operated by the entity.

(3) Nothing in [sections 1 through 8] may be construed to limit a governmental entity's ability to use, maintain, or store information on its own electronic communication service or to disseminate information stored on its own electronic communication service.

Section 5. Admissibility of proof -- violations. (1) Except as proof of a violation of [sections 1 through 8], evidence obtained in violation of [sections 1 through 8] is not admissible in a civil, criminal, or administrative proceeding and may not be used in an affidavit in an effort to obtain a search warrant or court order.

(2) The attorney general may apply for an injunction or commence a civil action against any governmental entity to compel compliance with the terms of [sections 1 through 8].

Section 6. Standing to challenge warrant or investigative subpoena. Providers of electronic communications service subject to a warrant or other legal process under [sections 1 through 8] have standing to challenge a warrant or other legal process that is inconsistent with [sections 1 through 8], any other statute or law, or the state or federal constitution.

Section 7. No cause of action against providers. No cause of action shall lie in any court against any provider of an electronic communication service, its officers, employees, agents, or other specified persons for providing information or assistance in accordance with the terms of [sections 1 through 8].

Section 8. Voluntary disclosure of electronic communications. Nothing in [sections 1 through 8] prohibits the voluntary disclosure of electronic communication information by a provider of an electronic communication service or any other entity when such disclosure is not otherwise prohibited by law, including but not limited to when:

(1) the provider first obtains the lawful consent of the subscriber or customer, or originator, an addressee, or intended recipient of the electronic communication; or

(2) the provider, in good faith, believes that an emergency involving danger, death, or serious physical injury to a person requires disclosure without delay of communications relating to the emergency.

Section 9. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 46, chapter 5, and the provisions of Title 46, chapter 5, apply to [sections 1 through 8].

Approved May 3, 2017

CHAPTER NO. 247

[HB 216]

AN ACT REQUIRING THE OWNERS OF WIND GENERATION FACILITIES TO SUBMIT A DECOMMISSIONING PLAN AND BOND TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE DEPARTMENT TO ADMINISTER THE PROGRAM USING EXISTING RESOURCES; ESTABLISHING PLAN AND BOND REQUIREMENTS AND TIMELINES; PROVIDING EXCEPTIONS TO BOND REQUIREMENTS; ESTABLISHING CRITERIA FOR BOND RELEASE; PROVIDING A PENALTY FOR FAILURE TO SUBMIT A BOND; CREATING A STATE SPECIAL REVENUE ACCOUNT; ALLOWING THE DEPARTMENT TO PROPERLY DECOMMISSION A FACILITY IN CERTAIN CASES; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Decommission" or "decommissioning" means:

(a) the removal of an aboveground wind turbine tower after the end of a wind generation facility's useful life or abandonment;

(b) except as provided in [section 2(2)], the removal of buildings, cabling, electrical components, roads, or any other associated facilities; and

(c) except as provided in [section 2(2)], reclamation of surface lands to the previous grade and to comparable productivity in order to prevent adverse hydrologic effects.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Owner" means a person who owns a wind generation facility used for the generation of electricity.

(5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(6) "Repurposed" means having made a significant investment in an existing wind generation facility to extend the useful life of the facility by more than 5 years.

(7) "Wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind that have a nameplate capacity greater than or equal to 25 megawatts.

Section 2. Bond -- penalty for failure to submit. (1) On or before July 1, 2018, the owner of a wind generation facility operating in Montana shall:

(a) notify the department in writing of the date that the facility began commercial operation;

(b) subject to subsection (2), submit a plan for decommissioning the facility to the department, including the scope of work to be completed and cost estimates for completion; and

(c) provide the department with any other necessary information in accordance with [sections 1 through 5] and rules adopted pursuant to [sections 1 through 5] in order for the department to determine bond requirements in accordance with this section.

(2) If a property owner and the owner of a wind generation facility reach an agreement concerning alternative restoration of buildings, cabling, electrical components, roads, or any other associated facilities, instead of removal; alternative plans for reclamation of surface lands; or both alternative restoration and alternative plans for reclamation, decommissioning does not include removal, plans for reclamation, or both, as long as a copy of the agreement is provided to the department.

(3) If necessary, the department may modify a plan for decommissioning to determine bond requirements in accordance with subsections (4) through (8).

(4) In determining the amount of a bond required in accordance with subsection (6), the department shall consider:

(a) the character and nature of the site where the wind generation facility is located; and

(b) the current market salvage value of the wind generation facility, as determined by an independent evaluator.

(5) Except as provided in subsections (7) and (8) and in accordance with subsection (6), the owner of a wind generation facility shall submit to the department a bond payable to the state of Montana in a form acceptable by the department and in the sum determined by the department, conditioned on the faithful decommissioning of the wind generation facility.

(6) (a) Except as provided in subsections (7) and (8), if a wind generation facility commenced commercial operation on or before January 1, 2007, the operator shall submit the decommissioning bond to the department prior to the conclusion of the 16th year of operation of the wind generation facility.

(b) Except as provided in subsections (7) and (8), if a wind generation facility commenced commercial operation after January 1, 2007, the operator shall

submit the decommissioning bond to the department prior to the conclusion of the 15th year of operation of the wind generation facility.

(7) If a wind generation facility is repurposed, as determined by the department in consultation with the owner, the owner is not required to provide a bond, and any existing bond must be released until the repurposed facility reaches its 5th year of operation.

(8) An owner of a wind generation facility is exempt from the requirements of subsection (6) if:

(a) the owner posts a bond with a federal agency, with the department of natural resources and conservation for the lease of state land, or with a tribal, county, or local government;

(b) the private landowner on whose land the wind generation facility is located owns a 10% or greater share of the wind generation facility, as determined by the department; or

(c) the wind generation facility commenced commercial operation on or before January 1, 2018, and has less than 25 megawatts in nameplate capacity.

(9) (a) If the owner of the wind generation facility fails to submit a decommissioning bond acceptable to the department within the timeframe required by this section, the department may assess an administrative penalty of not more than \$1,500, and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the decommissioning bond continues.

(b) The owner of the wind generation facility may appeal the department's penalty assessment to the board within 20 days after receipt of written notice of the penalty. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) If the owner of a wind generation facility transfers ownership of the facility to a successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this section.

(11) Once every 5 years, the owner of a wind generation facility may apply to the department for a reduction in the amount of the decommissioning bond applicable to the wind energy facility. The owner's application to the department must include a detailed description of any material changes to information considered by the department in setting the initial amount of the bond.

(12) Submitting a bond in accordance with this section does not absolve the owner of a wind generation facility from complying with applicable regulations and requirements for:

(a) areas subject to local zoning adopted under Title 76, chapter 2;

(b) military affected areas under Title 10, chapter 1, part 15; or

(c) airport affected areas under Title 67, chapter 7.

Section 3. Wind decommissioning account -- use of existing resources. (1) There is a wind decommissioning account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) penalties collected in accordance with [section 2(9)]; and

(b) interest income earned on the account.

(2) Funds in the wind decommissioning account are statutorily appropriated, as provided in 17-7-502, to the department.

(3) (a) Money in the account may only be used by the department in implementing [sections 1 through 5] and rules adopted pursuant to [sections 1 through 5].

(b) The department shall administer [sections 1 through 5] using existing resources and money in the account pursuant to subsection (1).

(4) The department shall maintain and hold bonds or other surety received by the department as authorized in [section 2] for use in accordance with [sections 1 through 5].

Section 4. Release of bond – use of bond by department. (1) (a) Subject to subsection (1)(b), the department shall release the bond if it is satisfied that an owner has properly decommissioned a wind generation facility.

(b) At any time, an owner of a wind generation facility may petition the department for release of the bond, and the department shall reply with a determination within 90 days.

(2) If the owner of a wind generation facility fails to properly decommission a wind generation facility and has not commenced action to rectify deficiencies within 90 days after notification by the department, the department shall cause the bond to be forfeited. The department, with staff, equipment, and material under its control or by contract with others, may take any necessary actions to decommission the wind generation facility.

Section 5. Rulemaking. On or before January 1, 2018, the department shall adopt rules prescribing:

(1) standards and procedures for the submission of reasonable bonds with good and sufficient surety by the owners of wind generation facilities;

(2) the collection of penalties in accordance with [section 2(9)];

(3) criteria and the process for releasing a bond in accordance with [section 4];

(4) the department's use of a bond in the event that the owner of a wind generation facility fails to decommission a wind generation facility;

(5) information required by the department to determine bond requirements in accordance with [section 2]; and

(6) any additional requirements to ensure compliance with [sections 1 through 5].

Section 6. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108;

53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; [section 3]; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)"

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 8. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 5].

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2017

CHAPTER NO. 248

[HB 219]

AN ACT REVISING NET METERING LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION TO REVIEW NET METERING RATE CLASSIFICATIONS; ALLOWING THE COMMISSION TO REQUIRE SEPARATE METERING; REQUIRING A UTILITY TO CONDUCT A COST-BENEFIT STUDY; ALLOWING A UTILITY TO RECOVER COSTS; ALLOWING FOR A NEW SERVICE CLASSIFICATION; GRANTING RULEMAKING; GRANDFATHERING EXISTING CUSTOMER-GENERATOR RATES; AMENDING SECTIONS 69-3-306, 69-8-602, AND 69-8-603, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Cost-benefit analysis. (1) Before April 1, 2018, a public utility shall:

(a) conduct a study of the costs and benefits of customer-generators as defined in 69-8-103; and

(b) submit the study to the commission for the purpose of making determinations in accordance with a public utility's general rate case pursuant to [section 2].

(2) The utility may engage independent consultants or advisory services to complete a cost-benefit study. Costs are recoverable in rates.

(3) After [the effective date of this section] the commission may establish minimum information required for inclusion in a study conducted by a public utility in accordance with subsection (1)(a).

Section 2. Classification of service – net metering customers. (1) After a study is completed in accordance with [section 1] and subject to subsections (2) and (4) of this section, if the commission finds that customer-generators should be served under a separate classification of service as part of a public utility's general rate case, it shall establish appropriate classifications and rates based on the commission's findings relative to:

(a) the utility system benefits of the net metering resource; and

(b) the cost to provide service to customer-generators.

(2) The commission may, based on differences between net metering systems, establish subclassifications and rates as part of a public utility's general rate case.

(3) The commission may approve separate rates for customer-generators' production and consumption and require separate metering subject to 69-8-602 if it finds it is in the public interest and as part of a public utility's general rate case.

(4) If a public utility files a general rate case in accordance with Title 69, chapter 3, the general rate case must include the study required in accordance with [section 1] and be used by the commission to meet the requirements of the review of classifications of service required in this section.

Section 3. New classifications of service – grandfather clause. (1) Except as provided in subsection (2), if the commission approves new classifications of service for customer-generators in accordance with [section 2], the new classifications apply only to customer-generators interconnecting net metering systems on or after the date on which the commission adopts a final order implementing the new classifications.

(2) (a) A customer-generator that interconnects a net metering system prior to commission approval of new classifications of service for customer-generators may accept service under the new classifications of service at any time.

(b) After accepting service under a new classification of service, the customer-generator may not return to its original classification of service.

Section 4. Section 69-3-306, MCA, is amended to read:

“69-3-306. Classification of service. (1) ~~The~~ *Except as provided in subsection (3), the* commission may prescribe classifications of the service of all public utilities. ~~Such classifications~~ *Classifications* may take into account the quantity used, the time when used, and any other reasonable consideration. ~~Each~~ *A* public utility is required to conform its schedule of rates, tolls, and charges to ~~such~~ *the* classifications.

(2) The commission shall prescribe a declining block rate structure *or a structure appropriate to customer-generators* for electric service, when cost-justified.

(3) *Classifications of service for customer-generators must be determined in accordance with Title 69, chapter 8, part 6.”*

Section 5. Section 69-8-602, MCA, is amended to read:

“69-8-602. Utility net metering requirements. (1) A utility shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, ~~unless~~.

(2) (a) *If the commission determines, after appropriate notice and opportunity for comment,*

(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, *the commission may establish additional metering equipment requirements.*

(b) ~~The commission shall after taking into account~~ *consider* the benefits and costs *to a public utility and a customer-generator* of purchasing and installing additional metering equipment; and

(b) how the costs of *additional* net metering *equipment* are to be allocated between the customer-generator and the *public utility*; ~~and~~.

(2)(3) (a) ~~The commission shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class an appropriate rate pursuant to 69-3-306.~~

(b) ~~The~~ *Notwithstanding [sections 1 through 3], if the commission shall determine determines,* after appropriate notice and opportunity for comment, ~~if:~~

(a) ~~the that a public utility will incur is incurring~~ direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; ~~and~~

(b) ~~public policy is best served by imposing~~ *the commission may impose* these costs on the customer-generator, rather than allocating these costs among the *public utility’s* entire customer base.”

Section 6. Section 69-8-603, MCA, is amended to read:

“69-8-603. Net energy measurement calculation. Consistent with the other provisions of this part, *and except as provided in [section 2(3)],* the net energy measurement must be calculated in the following manner:

(1) The *public utility* shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the ~~electricity supplier~~ *public utility* exceeds the electricity generated by the customer-generator and fed back to the ~~electricity supplier~~ *public utility* during the billing period, the customer-generator must

be billed for the net electricity supplied by the ~~electricity supplier~~ *public utility and billed at the appropriate rate pursuant to 69-3-306*, in accordance with ~~normal metering practices 69-8-602 and [sections 1 through 3]~~.

(3) ~~If Subject to 69-8-602 and [sections 1 through 3], if~~ electricity generated by the customer-generator exceeds the electricity supplied by the ~~electricity supplier~~ *public utility*, the customer-generator must be:

(a) ~~billed for at the appropriate customer charges rate pursuant to 69-3-306 for that billing period, in accordance with 69-8-602; and~~

(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period, any remaining unused kilowatt-hour credit accumulated during the previous 12 months must be granted to the ~~electricity supplier~~ *public utility*, without any compensation to the customer-generator.”

Section 7. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 69, chapter 8, part 6, and the provisions of Title 69, chapter 8, part 6, apply to [sections 1 through 3].

Section 8. Coordination instruction. If both Senate Bill No. 78 and [this act] are passed and approved, then Senate Bill No. 78 is void.

Section 9. Coordination instruction. If Senate Bill No. 12 is not passed and approved and if both Senate Bill No. 7 and [this act] are passed and approved and if both contain a section that amends 69-8-602, then:

(1) the amendments to 69-8-602 in Senate Bill No. 7 are effective on passage and approval of Senate Bill No. 7 and are void on occurrence of the contingency in [section 13 of this act]; and

(2) effective on occurrence of the contingency in [section 13], 69-8-602 must be amended as follows:

“69-8-602. Utility *Public utility net metering requirements.* (1) A public utility shall:

(1) ~~allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless.~~

(2) (a) *If the commission determines, after appropriate notice and opportunity for comment:*

(a) ~~that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, the commission may establish additional metering equipment requirements.~~

(b) ~~The commission shall after taking into account consider the benefits and costs to a public utility and a customer-generator of purchasing and installing additional metering equipment; and~~

(b) ~~how the costs of additional net metering equipment are to be allocated between the customer-generator and the public utility; and.~~

(2)(3) (a) ~~The commission, in accordance with 69-8-601(2), shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class an appropriate rate pursuant to 69-3-306.~~

(b) ~~The Notwithstanding [sections 1 through 3 of HB 219], if the commission shall determine determines, after appropriate notice and opportunity for comment, if:~~

~~(a) that a public utility will incur is incurring direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and~~

~~(b) public policy is best served by imposing the commission may impose these costs on the customer-generator, rather than allocating these costs among the public utility's entire customer base."~~

Section 10. Coordination instruction. If Senate Bill No. 7 is not passed and approved and if both Senate Bill No. 12 and [this act] are passed and approved and if both contain a section that amends 69-8-602, then:

(1) the amendments to 69-8-602 in Senate Bill No. 12 are effective on passage and approval of Senate Bill No. 12 and are void on occurrence of the contingency in [section 13 of this act]; and

(2) effective on occurrence of the contingency in [section 13], 69-8-602 must be amended as follows:

"69-8-602. Utility Public utility net metering requirements. (1) A public utility shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission determines, after appropriate notice and opportunity for comment:

~~(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and~~

~~(b) how the costs of net metering are to be allocated between the customer-generator and the utility; and makes a determination in accordance with 69-8-604 that alternative net metering equipment should be used.~~

(2) (a) The commission shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class an appropriate rate pursuant to 69-3-306.

(b) The Notwithstanding [sections 1 through 3 of HB 219], if the commission shall determine determines, after appropriate notice and opportunity for comment, if:

~~(a) that a public utility will incur is incurring direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and~~

~~(b) public policy is best served by imposing the commission may impose these costs on the customer-generator, rather than allocating these costs among the public utility's entire customer base."~~

Section 11. Coordination instruction. (1) If Senate Bill No. 7, Senate Bill No. 12, and [this act] are all passed and approved and contain sections that amend 69-8-602, then effective on passage and approval of [this act], 69-8-602 must be amended as follows:

"69-8-602. Utility Public utility net metering requirements. A public utility shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission makes a determination in accordance with 69-8-604(3) that alternative net metering equipment should be used determines, after appropriate notice and opportunity for comment:

~~(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and~~

~~(b) how the costs of net metering are to be allocated between the customer-generator and the utility; and~~

(2) charge the customer-generator a minimum monthly fee that is the same as other customers of the electric *public* utility in the same rate class. The commission shall ~~determine, in accordance with 69-8-601(2) and~~ after appropriate notice and opportunity for comment, *determine* if:

(a) the *public* utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and

(b) public policy is best served by imposing these costs on the customer-generator, rather than allocating these costs among the *public* utility's entire customer base."

(2) The amendments to 69-8-602 in subsection (1) of this section are void on occurrence of the contingency in [section 13 of this act].

Section 12. Coordination instruction. If Senate Bill No. 7, Senate Bill No. 12, and [this act] are all passed and approved and contain sections that amend 69-8-602, then effective on the occurrence of the contingency in [section 13 of this act], 69-8-602 must be amended as follows:

"69-8-602. Utility *Public utility* net metering requirements. (1) A *public* utility shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission ~~determines, after appropriate notice and opportunity for comment:~~

(a) ~~that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and~~

~~(b) how the costs of net metering are to be allocated between the customer-generator and the utility; and makes a determination in accordance with 69-8-604 that alternative net metering equipment should be used.~~

(2) (a) ~~The commission, in accordance with 69-8-601(2), shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class an appropriate rate pursuant to 69-3-306.~~

~~(b) The Notwithstanding [sections 1 through 3 of HB 219], if the commission shall determine determines, after appropriate notice and opportunity for comment, if:~~

~~(a) the that a public utility will incur is incurring direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and~~

~~(b) public policy is best served by imposing the commission may impose these costs on the customer-generator, rather than allocating these costs among the public utility's entire customer base."~~

Section 13. Effective date – contingency – contingent voidness.

(1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) (a) [Sections 5, 6, 9(2), 10(2), and 12] are effective on the date that the public service commission issues an order making a determination that customer-generators are being served under a separate classification of service in accordance with [section 2].

(b) [Sections 9(1), 10(1), and 11] are void on occurrence of the contingency in subsection (2)(a).

(c) The public service commission shall provide a copy of the order to the code commissioner within 10 days of issuing the order.

Approved May 3, 2017

CHAPTER NO. 249

[HB 224]

AN ACT PROVIDING THAT THE PROPERTY TAX EXEMPTION FOR VETERANS' ORGANIZATIONS EXTENDS TO PROPERTY RENTED, LEASED, OR USED BY THE ORGANIZATION; AMENDING SECTION 15-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-203, MCA, is amended to read:

“15-6-203. Veterans’ exemptions – clubhouse – land – incompetent veterans’ trusts. (1) (a) ~~There is an exemption from taxation for a clubhouse, building, or land erected owned, rented, leased, or used primarily:~~

(i) ~~by or belonging to any society or organization of honorably discharged United States military personnel; and that is used primarily~~

(ii) ~~for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit is exempt from taxation.~~

(b) The clubhouse or building exemption provided for in this section applies:

(i) to the personal property necessarily used in the building; and

(ii) even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.

~~(c) The land exemption provided for in this section applies only to land owned by the society or organization continuously since January 1, 1960.~~

(c) If property exempt under this subsection (1) is owned by someone other than the society or organization, the savings from the property tax exemption must be realized by the society or organization.

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of the veterans, when the property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, is exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in the minor’s own right on account of removal of legal disability.”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016.

Approved May 3, 2017

CHAPTER NO. 250

[HB 225]

AN ACT REVISING THE MONTANA FOOTPATH AND BICYCLE TRAIL ACT OF 1975; PROVIDING FOR THE MAINTENANCE AND REPAIR OF SHARED-USE PATHS, INCLUDING THE STRUCTURES AND PROCESSES NECESSARY FOR BICYCLE AND PEDESTRIAN SAFETY EDUCATION; PROVIDING FOR AND ALLOCATING THE REVENUE FROM AN

OPTIONAL FEE ON MOTOR VEHICLE REGISTRATION TO BE USED FOR MAINTAINING, REPAIRING, AND ESTABLISHING SHARED-USE PATHS AND FOR SAFETY EDUCATION; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 60-3-301, 60-3-302, 60-3-303, 60-3-304, 61-3-321, AND 61-3-509, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Shared-use path project. The department of transportation shall, to the extent funds are available pursuant to [section 2]:

(1) establish a project for the maintenance and repair of shared-use paths described in this part and for educating users of shared-use paths;

(2) contract for services to produce, disseminate, and deliver safety information and programs to pedestrians and bicyclists. The contract must be with an entity that has a demonstrated ability to provide safety information on a statewide basis to pedestrians and bicyclists.

(3) consider adding signage along certain shared-use paths that designate walking pathways of least 1,320 feet that may be referred to as "Take a Break - Take a Walk" pathways.

Section 2. Allocation of funds. (1) Of the total funds in the account established in 61-3-321(21)(a):

(a) In fiscal year 2018 only, an amount not to exceed \$50,000 must be transferred to the department of justice to reprogram the software and equipment of the department and the department's vendor to accommodate the optional fee provided for in 61-3-321(21); and

(b) of the remainder in fiscal year 2018 and for succeeding fiscal years:

(i) 20% of the total must be allocated to the department of transportation to be used for bicycle and pedestrian education throughout the state as provided in [section 1(2)]; and

(ii) 80% of the total must be allocated as provided in subsection (2) by the department of transportation to each of the five districts established in 2-15-2502.

(2) The amount of funds to be allocated to a district is equal to the total amount of optional registration fees provided for in 61-3-321(21)(a) collected in the district divided by the total amount of the optional registration fees provided for in 61-3-321(21)(a) collected for the entire state.

(3) Except as provided in subsection (4), the total funds allocated to a district under subsection (1)(b)(ii) must be used within the district for the maintenance and repair of shared-use paths described in this part. At least 10% of the funds allocated to a district under subsection (1)(b)(ii) must be used to maintain or repair shared-use paths that are not part of the state-maintained federal-aid highway system.

(4) (a) Subject to the provisions of subsection (4)(b), if all of the shared-use paths in the district are maintained and repaired at a level that meets or exceeds the standards established pursuant to 60-3-304(3)(c) or if there are no shared-use paths in the district that are not part of the state-maintained federal-aid highway system, any funds remaining in a fiscal year may be used to construct new shared-use paths within the district.

(b) Prior to the construction or extension of a shared-use path, the department shall enter into a maintenance agreement with the county or municipality, or both, in which the path is proposed to be constructed or extended. The maintenance agreement may provide that maintenance be conducted by the county or the municipality, by both the county and the municipality, by the department, or by a combination of those entities. Based on the maintenance

agreement and available funding, the department shall transfer funds from the account established in 61-3-321(21)(a) to the appropriate county or municipality as provided for in the maintenance agreement. If the maintenance agreement provides for maintenance by the department, the department shall use the funds in the account for that purpose.

Section 3. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch.

17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)”

Section 4. Section 60-3-301, MCA, is amended to read:

“60-3-301. Short title. This part may be cited as the “Montana ~~Footpath and Bicycle Trail Act of 1975~~ *Shared-Use Path Act*”.”

Section 5. Section 60-3-302, MCA, is amended to read:

“60-3-302. Bicycle trail *Shared-use path* defined. As used in this part, “bicycle trail” means a publicly owned and maintained lane or way designated and signed for use as a bicycle route “*shared-use path*” means a multiuse path that is separated from motorized vehicular traffic by an open space, pavement markings, or a barrier within a highway right-of-way and that is usable for transportation purposes by pedestrians, runners, bicyclists, skaters, equestrians, and other nonmotorized users. A sidewalk, as defined in 61-8-102, is not a *shared-use path*.”

Section 6. Section 60-3-303, MCA, is amended to read:

“60-3-303. ~~Footpaths and bicycle trails~~ *Shared-use paths to be established – funding.* (1) (a) ~~The Subject to the provisions of subsection (1)(b), the commission or the department or a county or city, with funds received from the commission or the department, may construct or extend footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road a *shared-use path*:~~

(i) wherever a highway, road, or street is being constructed, reconstructed, or relocated. ~~In addition, footpaths and bicycle trails may be established;~~

(ii) ~~at any time along all streets a highway, road, or street under state jurisdiction. Funds may also be expended to construct footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas; or~~

(iii) if the construction enhances traffic safety and convenience. ~~Footpaths and bicycle trails may be constructed along all sections of the national defense interstate highway system.~~

(b) ~~Funds allocated by the department pursuant to [section 2] may be used for the purposes described in subsection (1)(a) of this section only as provided in [section 2(3)].~~

(2) ~~Footpaths and trails~~ A *shared-use path* may not be established under subsection (1):

(a) if the cost of establishing the ~~paths and trails~~ *path* is excessively disproportionate to the need or probable use; or

(b) if sparsity of population, other available ways, or other factors indicate an absence of any need for the ~~paths and trails~~ *path*.

(3) The commission shall let to contract in any period of 5 consecutive fiscal years not less than an average of \$200,000 each year ~~for footpaths and bicycle~~

~~trails to construct or extend shared-use paths.~~ The department shall establish accounting procedures to document compliance with this subsection.”

Section 7. Section 60-3-304, MCA, is amended to read:

“60-3-304. Duties of department of transportation. (1) *The allocation of available funds for the maintenance, repair, and establishment of paths and trails shared-use paths and the expenditure of funds as authorized by this part are primarily for the maintenance and repair of shared-use paths and for the promotion of traffic safety on the highways, roads, and streets of the state.*

(2) The transportation commission shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this part.

~~(2)(3)~~(3) The department of transportation shall:

~~(a) maintain an inventory of all shared-use paths located in the right-of-way of each state-maintained federal-aid highway in Montana;~~

~~(b) maintain a plan for maintenance and repair of all the shared-use paths described in subsection (3)(a);~~

~~(c) recommend construction and maintenance standards for footpaths and bicycle trails shared-use paths.~~ The department shall;

~~(d) provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails shared-use paths that applies to all shared-use paths, whether under the jurisdiction of the commission and cities and counties. The commission and cities and counties shall restrict the use of footpaths and bicycle trails under their jurisdiction to pedestrians and nonmotorized vehicles to the maximum possible extent, except that the commission, in cooperation with local governments, may authorize the operation of snowmobiles on designated portions of bicycle trails and footpaths when snow conditions permit or a city or county; and~~

~~(e) as provided in [section 2], allocate funds in the account established in 61-3-321(21).~~

~~(4) (a) Except as provided in subsection (4)(b), shared-use paths may not be used by motorized vehicles.~~

~~(b) The transportation commission, a city or county, or the commission jointly with a city or county may authorize the use of snowmobiles on all or a portion of a shared-use path under its jurisdiction.”~~

Section 8. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles and vessels – certain vehicles exempt from registration fees – disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (20).

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, \$217;

(b) if the vehicle is 5 through 10 years old, \$87; and

(c) if the vehicle is 11 or more years old, \$28.

(3) Except as provided in subsection (15), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, \$61.25; or

(b) if the declared weight is 6,000 pounds or more, \$148.25.

(4) Except as provided in subsection (15), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, \$10; and

(b) under 2,850 pounds, \$5.

(5) Except as provided in subsection (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, \$282.50;

(ii) 2 years old and less than 5 years old, \$224.25;

(iii) 5 years old and less than 8 years old, \$132.50; and

(iv) 8 years old and older, \$97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of \$237.50;

(ii) unless a new set of license plates is being issued, an insurance verification fee of \$5, which must be deposited in the account established under 61-6-158;

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406; and

(iv) if applicable, the donation fee for a generic specialty license plate under 61-3-480 or a collegiate license plate under 61-3-465.

(8) (a) Except as provided in subsection (15), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

(b) An additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (15), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, \$72; and

(b) 16 feet in length or longer, \$152.

(10) Except as provided in subsection (15), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(11) (a) Except as provided in subsections (11)(b) and (15), the one-time registration fee for a snowmobile is \$60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of \$40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of \$20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) The one-time registration fee for a low-speed electric vehicle is \$25.

(b) The one-time registration fee for a golf cart that is owned by a person who has or is applying for a low-speed restricted driver's license is \$25.

(c) The one-time registration fee for golf carts authorized to operate on certain public streets and highways pursuant to 61-8-391 is \$25. Upon receipt of the fee, the department shall issue the owner a decal, which must be displayed visibly on the golf cart.

(13) (a) Except as provided in subsection (13)(b), a fee of \$10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The \$10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) An additional fee of \$15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (13) must be deposited in the account established under 61-6-158, except that \$2 of the fee imposed in subsection (13)(a) must be deposited in the state general fund.

(14) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(d), (1)(e), (1)(g), (1)(h), (1)(i), (1)(k), (1)(l), (1)(n), or (1)(o), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(15) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411, or low-speed electric vehicle is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(16) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(17) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(18) The fees imposed by subsections (2) through (12) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(19) (a) Unless a person exercises the option in either subsection (19)(b) or (19)(c), an additional fee of \$6 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$6 fee, the department of fish, wildlife, and parks shall use \$5.37 for state parks, 25 cents for fishing access sites, and 38 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$6 fee provided for in subsection (19)(a). If a written election is made, the fee may not be collected.

(c) (i) A person who registers one or more light vehicles may, at the time of annual registration, certify that the person does not intend to use any of the vehicles to visit state parks and fishing access sites and may make a written election not to pay the additional \$6 fee provided for in subsection (19)(a). If a written election is made, the fee may not be collected at any subsequent annual registration unless the person makes the written election to pay the additional fee on one or more of the light vehicles.

(ii) The written election not to pay the additional fee on a light vehicle expires if the vehicle is registered to a different person.

(20) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(21) (a) *If a person exercises the option in subsection (21)(b), an additional fee of \$5 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund. Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated as provided in [section 2].*

(b) *A person who registers one or more light vehicles may, at the time of annual registration, make a written or electronic election to pay the additional \$5 fee provided for in subsection (21)(a).*

~~(21)(22)~~ This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721.”

Section 9. Section 61-3-509, MCA, is amended to read:

“61-3-509. Disposition of fees – responsibility for dishonored payments. (1) ~~Except as otherwise provided in 61-3-321, all~~ registration fees imposed by 61-3-321 on light vehicles, motor homes, motorcycles, quadricycles, buses, motor vehicles having a manufacturer’s rated capacity of more than 1 ton, and truck tractors for which a license is sought must be remitted to the state as provided in 15-1-504 every 30 days. The payments must be deposited in the state general fund.

(2) (a) The department, its authorized agent, or a county treasurer is responsible for pursuing remedies available under 27-1-717 or otherwise provided by law when a check, draft, converted check, electronic funds transfer, or order for the payment of money is dishonored:

(i) for lack of funds or credit;

(ii) because the issuer does not have an account with the entity from which the funds are to be drawn; or

(iii) because the issuer stops payment with the intent to defraud the payee of the check or the payee named on the issued check, draft, converted check, electronic funds transfer, or order for the payment of money.

(b) Once fees have been remitted to the state under this section, adjustments may be made only for dishonored instruments if less than 1 year has elapsed from the date of remittance.”

Section 10. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 60, chapter 3, part 3, and the provisions of Title 60, chapter 3, part 3, apply to [sections 1 and 2].

Section 11. Effective date. [This act] is effective July 1, 2017.

Approved May 3, 2017

CHAPTER NO. 251

[HB 245]

AN ACT REVISING A GOVERNING BODY'S RESPONSIBILITIES CONCERNING THE SUBMISSION AND EVALUATION OF THE FINAL PLAT OF A SUBDIVISION; PROVIDING TIMELINES FOR DETERMINATIONS CONCERNING THE INFORMATION REQUIRED FOR THE FINAL PLAT; REQUIRING NOTIFICATIONS CONCERNING THE DETERMINATION; AND AMENDING SECTION 76-3-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-611, MCA, is amended to read:

“76-3-611. Review of final plat. (1) The governing body or the agent or agency designated by the governing body shall examine each final ~~subdivision~~ plat and the governing body shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) (a) The governing body may require that final ~~subdivision~~ plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

(3) (a) *A final plat is considered to be received on the date of delivery to the governing body or the agent or agency designated by the governing body when accompanied by the review fee submitted as provided in 76-3-602.*

(b) *Within 20 working days of receipt of a final plat, the governing body or the agent or agency designated by the governing body shall determine whether the final plat contains the information required under subsections (1) and (2) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of that determination in writing. If the governing body or its agent or agency determines that the final plat does not contain the information required under subsections (1) and (2), the governing body or its agent or agency shall identify the final plat's defects in the notification.*

(c) *The governing body or its agent or agency may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (3)(b).*

(d) *If the governing body determines that an examining land surveyor must review a final plat pursuant to subsection (2)(a), the governing body or its agent or agency shall identify the requirement in its notification.*

(e) *The time limits provided in subsection (3)(b) apply to each submission of the final plat until a written determination is made that the final plat contains*

the information required under subsections (1) and (2) and the subdivider or the subdivider's agent is notified.

(4) If a determination is made under subsection (3)(b) that the final plat contains the information required under subsections (1) and (2), the governing body shall review and approve or deny the final plat within 20 working days.

(5) The subdivider or the subdivider's agent and the governing body or its reviewing agent or agency may mutually agree to extend the review periods provided for in this section."

Approved May 3, 2017

CHAPTER NO. 252

[HB 287]

AN ACT PROVIDING THAT ADDRESS CONFIRMATION IS NOT REQUIRED FOR AN ELECTOR ON THE ABSENTEE BALLOT LIST FOR SUBSEQUENT ELECTIONS UNLESS THE ELECTOR HAS CHANGED THE ELECTOR'S ADDRESS; AND AMENDING SECTIONS 13-2-220 AND 13-13-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-220, MCA, is amended to read:

"13-2-220. Maintenance of active and inactive voter registration lists for elections – rules by secretary of state. (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, at least one of which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable--address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration cards, and provisionally registered electors by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) An individual who submits an application for an absentee ballot for a federal general election or who completes and returns the address confirmation notice specified in 13-13-212~~(3)~~(4) during the calendar year in which a federal general election is held is not subject to the procedure in subsection (1)(c) unless the individual's ballot for a federal general election is returned as undeliverable and the election administrator is not able to contact the elector through the most expedient means available to resolve the issue.

(3) Any notices returned as undeliverable to the election administrator or any notices to which the elector fails to respond after the election administrator uses the procedures provided in subsection (1) must be followed within 30

days by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the final confirmation notice, the election administrator shall move the elector to the inactive list.

(4) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

(5) An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402."

Section 2. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot – special provisions – biennial absentee ballot list for subsequent elections. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standard application form provided by rule by the secretary of state pursuant to 13-1-210 or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from a uniformed-service voter may apply for an absentee ballot for that election on behalf of the uniformed-service voter. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the absentee election board or by an authorized election official as provided in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the absentee election board or by an authorized election official at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under subsection (2)(a) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.

~~(b)-(i)(4)~~ (a) *An elector who has requested to be on the absentee ballot list and who has not filed a change of address with the U.S. postal service must continue to receive an absentee ballot for each subsequent election.*

(b) (i) The election administrator shall biennially mail a forwardable address confirmation form to each elector who ~~has requested an absentee ballot for subsequent elections~~ *is listed in the national change of address system of the U.S. postal service as having changed the elector's address.*

(ii) The address confirmation form must request the elector's driver's license number or the last four digits of the elector's social security number. The address confirmation form must include an e-mail address for the election administrator that can be used by the elector to confirm that the elector wishes to continue to receive an absentee ballot and to provide the requested information. The address confirmation form must be mailed in January of every even-numbered year. The address confirmation form is for elections to

be held between February 1 following the mailing through January of the next even-numbered year.

~~(ii)(iii)~~ An election administrator may provide a website on which the elector can provide the required information to confirm that the elector wishes to remain on the ~~biennial~~ absentee ballot list.

~~(iii)(iv)~~ ~~Except as provided in subsections (3)(b)(iv) and (3)(b)(v)~~ *If the elector is providing confirmation using the address confirmation form*, the elector shall sign the form, indicate the address to which the absentee ballot should be sent, provide the elector's driver's license number or the last four digits of the elector's social security number, and return the form to the election administrator.

~~(iv)(v)~~ The elector may provide the required information to the election administrator using:

(A) the e-mail address provided on the form; or

(B) a website established by the election administrator.

~~(v)(vi)~~ The elector does not need to provide a signature when using either option provided in subsection ~~(3)(b)(iv)~~ (4)(b)(v) to confirm that the elector wishes to remain on the ~~biennial~~ absentee ballot list.

~~(v)(vii)~~ If the form is not completed and returned or if the elector does not respond using the options provided in subsection ~~(3)(b)(iv)~~ (4)(b)(v), the election administrator shall remove the elector from the ~~biennial~~ absentee ballot list.

~~(d)(c)~~ An elector may request to be removed from the ~~biennial~~ absentee ballot list for subsequent elections by notifying the election administrator in writing.

~~(e)(d)~~ An elector who has been or who requests to be removed from the ~~biennial~~ absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

~~(4)(5)~~ In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in ~~subsection (3) this section.~~"

Approved May 3, 2017

CHAPTER NO. 253

[HB 333]

AN ACT ADOPTING THE HELP SAVE LIVES FROM OVERDOSE ACT; AUTHORIZING THE PRESCRIBING, DISPENSING, DISTRIBUTING, AND ADMINISTERING OF OPIOID ANTAGONIST MEDICATION TO ELIGIBLE RECIPIENTS; PROVIDING TRAINING AND INSTRUCTION REQUIREMENTS FOR DISPENSING OR DISTRIBUTING OPIOID ANTAGONIST MEDICATION; PROVIDING DEFINITIONS; PROVIDING DISCIPLINARY, CIVIL, AND CRIMINAL IMMUNITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-2-104, 45-5-626, 45-9-102, 45-9-107, AND 45-10-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, according to data from the United States Centers for Disease Control and Prevention (CDC), more than 28,000 deaths in the United States in 2014 involved opioid-related overdoses. In 2015, nationwide overdose deaths involving opioids rose to more than 33,000. The CDC also reports that deaths involving heroin have more than tripled since 2010, with more than 10,500 persons dying in 2014 and almost 13,000 dying in 2015. More than 60% of the opioid-related overdose deaths in 2015 were attributed to primarily illicit

opioids, including heroin, to synthetic opioids other than methadone, or to a mixture of the two. The CDC calls opioid-related deaths a national epidemic; and

WHEREAS, many opioid-related overdose deaths could be prevented by the timely administration of an opioid antagonist, such as naloxone hydrochloride. Naloxone is a prescription medication that, when administered to a person experiencing an opioid-related overdose, restores the person to consciousness and normal breathing. Naloxone has been in use for more than 30 years and is virtually always effective when administered correctly. Furthermore, naloxone is nonaddictive and has no potential for abuse; and

WHEREAS, treatment of a suspected opioid-related drug overdose must be performed by someone other than the person overdosing, and, for this reason, the United States Food and Drug Administration labels naloxone for third-party administration. Naloxone can be successfully administered outside of a clinical setting or facility by friends, family members, or bystanders who have received minimal training in overdose recognition and naloxone administration; and

WHEREAS, it is common for a family member or friend to be the first one to find a person who is experiencing a drug overdose. It is also common for first responders, such as law enforcement officers or firefighters, to be among the first persons on the scene of a reported drug overdose. Studies show widespread success in preventing deaths from opioid-related overdoses through timely administration of naloxone. It is imperative, therefore, that persons who are in a position to render timely assistance to an overdose victim have immediate access to naloxone when it is needed; and

WHEREAS, overdose education and naloxone distribution programs that train family members, friends, and others in a position to assist someone experiencing an opioid-related overdose can effectively reduce opioid overdose death rates. Moreover, naloxone distribution for administration by nonmedical experts can be highly cost-effective; and

WHEREAS, an opioid-related overdose is a medical emergency. After the administration of naloxone, it is critical to summon emergency medical assistance. However, persons who witness an overdose are sometimes reluctant to call 9-1-1 for fear of being arrested and prosecuted for a crime. Thirty-six states and the District of Columbia have passed laws providing limited immunity to persons who call for help when someone has experienced an opioid-related overdose; and

WHEREAS, numerous state and national public health and other organizations support increased access to naloxone, including the American Medical Association, the American Society of Addiction Medicine, the American Pharmacists Association, the United States Conference of Mayors, the National Governors Association, the federal Office of National Drug Control Policy, the American Public Health Association, the Harm Reduction Coalition, the National Association of State Alcohol and Drug Abuse Directors, the American Association of Poison Control Centers, and state and local law enforcement and other organizations representing first responders.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 11] may be cited as the “Help Save Lives from Overdose Act”.

Section 2. Purpose. The purposes of [sections 1 through 11] are to:

(1) save the lives of persons who have experienced an opioid-related drug overdose by providing the broadest possible access to lifesaving opioid antagonist medication;

(2) facilitate the availability and use of opioid antagonist medication by providing professional, civil, and criminal immunity to persons who prescribe, dispense, distribute, or administer an opioid antagonist; and

(3) encourage persons to seek medical treatment in an opioid-related drug overdose situation by providing immunity from prosecution for certain criminal offenses for persons who seek or receive the medical treatment.

Section 3. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) “Administer” means to apply an opioid antagonist to the body of another person by injection, inhalation, ingestion, auto-injector, or another means.

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Dispense” or “dispensing” has the meaning provided in 37-7-101.

(4) “Distribute” has the meaning provided in 37-7-101.

(5) “Eligible recipient” means:

(a) a person who is at risk of experiencing an opioid-related drug overdose;
(b) a family member, friend, or other person who is in a position to assist a person who is at risk of experiencing an opioid-related drug overdose;

(c) a first responder or a first responder entity;

(d) a harm reduction organization or its representative;

(e) the Montana state crime laboratory or its representative;

(f) a person who, on behalf of or at the direction of a law enforcement agency or officer, may process, store, handle, test, transport, or possess a suspected or confirmed opioid;

(g) a probation, parole, or detention officer;

(h) a county or other local public health department or its representative;

or

(i) a veterans’ organization or its representative.

(6) “First responder” means a paid or volunteer firefighter, law enforcement officer, or other authorized person who responds to an emergency in a professional or volunteer capacity. The term does not include an ECP, also known as an emergency care provider, as defined in 37-3-102.

(7) “Harm reduction organization” means an organization that provides direct assistance and services, including but not limited to counseling, screening, and drug treatment, to persons at risk of experiencing an opioid-related drug overdose.

(8) “Law enforcement officer” means a person who is a peace officer as defined in 46-1-202 or any other agent of a criminal justice agency as defined in 44-5-103.

(9) “Medical practitioner” has the meaning provided in 37-2-101.

(10) “Opioid antagonist” means a drug that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors. The term includes naloxone hydrochloride and any other similarly acting drug approved by the United States food and drug administration.

(11) “Opioid-related drug overdose” means an acute condition evidenced by symptoms, including but not limited to physical illness, pinpoint pupils, coma, decreased level of consciousness, or respiratory depression, resulting from the consumption or use of an opioid or another substance with which an opioid is combined.

(12) “Standing order” means a written document prepared by a medical practitioner that authorizes an eligible recipient to acquire, distribute, or administer medication without a person-specific prescription.

(13) “State medical officer” means a physician licensed to practice medicine under Title 37, chapter 3, who is employed by the department to, among other

things, provide advice and expertise to the department on medical policy and issues of public health importance.

Section 4. Statewide standing orders for opioid antagonist. (1) The state medical officer may prescribe on a statewide basis an opioid antagonist by one or more standing orders to eligible recipients.

(2) A standing order must specify, at a minimum:

(a) the opioid antagonist formulations and means of administration that are approved for dispensing;

(b) the eligible recipients to whom the opioid antagonist may be dispensed;

(c) any training that is required for an eligible recipient to whom the opioid antagonist is dispensed;

(d) the circumstances under which an eligible recipient may distribute or administer the opioid antagonist; and

(e) the timeline for renewing and updating the standing order.

Section 5. Prescribing and dispensing authority for opioid antagonist. A medical practitioner may prescribe, directly, by a standing order, or by a collaborative practice agreement, or dispense, as permitted under 37-2-104, an opioid antagonist to an eligible recipient. The medical practitioner shall document the reasons for which the opioid antagonist was prescribed or dispensed.

Section 6. Designation of patient – instruction. (1) A prescription issued pursuant to [section 4] or [section 5] must designate the eligible recipient as the patient, regardless of the eligible recipient's status as an individual, organization, agency, or other entity. Except as provided in [section 5], the prescription must be dispensed by a licensed pharmacy.

(2) A licensed pharmacy or medical practitioner dispensing an opioid antagonist shall provide the patient with basic instruction and information, the content of which must be developed by the department and made publicly available on the department's website, concerning recognition of the signs and symptoms of an opioid-related drug overdose, indications for the administration of an opioid antagonist, administration technique, and the need for immediate and long-term followup to the administration of the opioid antagonist, including calling 9-1-1.

(3) An eligible recipient described in [section 3(5)(c) through (5)(i)] who distributes an opioid antagonist pursuant to [section 7] shall:

(a) fulfill the basic instruction and information requirements set forth in subsection (2); and

(b) develop protocol for:

(i) instructing and training the eligible recipient's employees or other authorized personnel that is consistent with the instruction and information developed by the department under subsection (2); and

(ii) the storage, maintenance, and location of the opioid antagonist.

Section 7. Authorization for possession and administration of opioid antagonist – reporting. (1) An eligible recipient to whom an opioid antagonist is prescribed, dispensed, or distributed pursuant to [sections 4 through 6] and who has received the instruction and information provided for in [section 6] may do any of the following:

(a) possess and store the opioid antagonist. The storage of an opioid antagonist is not subject to pharmacy practice laws or other requirements that apply to the storage of drugs or medications.

(b) in good faith, administer or direct another person to administer the opioid antagonist to a person who is experiencing an actual or reasonably perceived opioid-related drug overdose; or

(c) distribute the opioid antagonist to a person who is an eligible recipient under [section 3(5)(a) or (5)(b)].

(2) An eligible recipient to whom an opioid antagonist is dispensed pursuant to [sections 4 through 6] shall report, if required by the department, information regarding the dispensing, distribution, and administration of the opioid antagonist.

Section 8. Professional conduct – immunity. (1) A prescription issued pursuant to [section 4] or [section 5] is considered to have been issued for a legitimate medical purpose in the usual course of a professional practice.

(2) Except for injury or damages arising from gross negligence, willful or wanton misconduct, or an intentional tort:

(a) a medical practitioner or licensed pharmacist may not be subject to disciplinary action or civil or criminal liability for injury resulting from the prescribing or dispensing of an opioid antagonist pursuant to [sections 4 through 6] to an eligible recipient; and

(b) an eligible recipient may not be subject to disciplinary action or civil or criminal liability for injury resulting from distributing an opioid antagonist pursuant to [sections 6 and 7].

(3) A medical practitioner, eligible recipient, emergency care provider, or other person is not liable and may not be subject to disciplinary action as a result of any injury arising from the administration of an opioid antagonist to another person whom the medical practitioner, eligible recipient, emergency care provider, or other person believes in good faith to be suffering from an opioid-related drug overdose, unless the injury arises from an act or omission that is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(4) The provisions of [sections 1 through 7] do not establish a duty or standard of care with respect to the decision of whether to prescribe, dispense, distribute, or administer an opioid antagonist.

Section 9. Good Samaritan protections. (1) The provisions of 45-5-626, 45-9-102, 45-9-107, and 45-10-103 do not apply to:

(a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the person's seeking medical assistance for another person; and

(b) a person who experiences a drug-related overdose and is in need of medical assistance if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.

(2) A person's pretrial release, probation, furlough, supervised release, or parole may not be revoked based on an incident for which the person would be immune from arrest, charge, or prosecution under this section.

(3) A person's act of providing first aid or other medical assistance to a person who is experiencing an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under this section.

(4) This section may not be construed to:

(a) bar the admissibility of evidence obtained in connection with the investigation and prosecution of other crimes or violations committed by a person who otherwise qualified for limited immunity under this section; or

(b) limit, modify, or remove immunity from liability currently available to public entities, public employees, or prosecutors or by law.

Section 10. Grants. The department may apply for and award grants to further the purposes outlined in [sections 1 through 7].

Section 11. Rulemaking. The department may adopt rules regarding opioid antagonist instruction, training, and reporting, as provided for in [sections 6 and 7].

Section 12. Section 37-2-104, MCA, is amended to read:

“37-2-104. Dispensing of drugs by medical practitioners unlawful – exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit *any of the following*:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician’s written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (2)(h) must meet the labeling requirements of the board of pharmacy.

(i) *a medical practitioner from dispensing an opioid antagonist as provided in [section 5].”*

Section 13. Section 45-5-626, MCA, is amended to read:

“45-5-626. Violation of order of protection. (1) *Except as provided in [section 9], a person commits the offense of violation of an order of protection if the person, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection under Title 40, chapter 15. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.*

(2) Only the respondent under an order of protection may be cited for a violation of the order. The petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

(3) An offender convicted of violation of an order of protection shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. Upon conviction for a second

offense, an offender shall be fined not less than \$200 and not more than \$500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than \$500 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years.”

Section 14. Section 45-9-102, MCA, is amended to read:

“45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in [section 9] or Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both. This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs in 50-32-222.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed \$50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and

(vi) the person to submit to random or routine drug and alcohol testing.

(6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

(7) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 15. Section 45-9-107, MCA, is amended to read:

"45-9-107. Criminal possession of precursors to dangerous drugs.

(1) *Except as provided in [section 9],* a person commits the offense of criminal possession of precursors to dangerous drugs if:

(a) the person possesses any material, compound, mixture, or preparation that contains any combination of the following with intent to manufacture dangerous drugs:

(i) phenyl-2-propanone (phenylacetone);

(ii) piperidine in conjunction with cyclohexanone;

(iii) ephedrine;

(iv) lead acetate;

(v) methylamine;

(vi) methylformamide;

(vii) n-methylephedrine;

(viii) phenylpropanolamine;

(ix) pseudoephedrine;

(x) anhydrous ammonia;

(xi) hydriodic acid;

(xii) red phosphorus;

(xiii) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;

(xiv) lithium in conjunction with anhydrous ammonia; or

(b) the person knowingly possesses anhydrous ammonia for the purpose of manufacturing dangerous drugs.

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed \$50,000, or both."

Section 16. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. Except as provided in *[section 9]* or Title 50, chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this

section is presumed to be entitled to a deferred imposition of sentence of imprisonment.”

Section 17. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 11].

Section 18. Two-thirds vote required. Because [this act] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 19. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2017

CHAPTER NO. 254

[HB 344]

AN ACT PROVIDING FOR A TRANSFER OF FUNDS FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE COAL BED METHANE PROTECTION ACCOUNT; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ALLOW CONSERVATION DISTRICTS TO PROPERLY ADMINISTER THE COAL BED METHANE PROTECTION PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Coal Bed Methane Protection Act requires the distribution of coal bed methane protection account funds in accordance with section 76-15-905, MCA; and

WHEREAS, a long-term coal bed methane protection account and program were established by the Legislature in 2001, with rules and procedures established in 2005 and 2011, to compensate private landowners and water rights holders for damage to soil, crops, and water quality and availability attributable to the development of coal bed methane; and

WHEREAS, stakeholders have worked extensively to create baseline data for producers and water users affected by coal bed methane development; and

WHEREAS, conservation districts with coal beds within their exterior boundaries or with water sources, land values, or agricultural production adversely affected by the extraction, development, or both extraction and development of coal bed methane administer the program; and

WHEREAS, conservation districts have established procedures for evaluating claims for compensation submitted by a private landowner or a water rights holder, and conservation districts can approve or deny claims for compensation and also receive compensation for their administrative expenses under the program, which is overseen by the Department of Natural Resources and Conservation; and

WHEREAS, the Department is responsible for administering funds in the account for use by the conservation districts and is responsible for approval of a conservation district's procedures for evaluating claims for compensation under the program; and

WHEREAS, to encourage a consistent approach among conservation districts administering the program, representatives from the Big Horn, Custer, Carbon, Carter, Powder River, Rosebud, Treasure, Wibaux, Garfield, Gallatin, Yellowstone, and Prairie Conservation Districts have prepared procedures, guidelines, and claim forms; and

WHEREAS, the Department's role is limited to approval of the conservation district's rules and administration of funds, and the Department does not have review authority over conservation district decisions or actions implementing the program; and

WHEREAS, under the Coal Bed Methane Protection Act applications for compensation may be made only for private lands and private water rights; and

WHEREAS, the Powder River Conservation District approved five landowner claims in fiscal year 2015 and fiscal year 2016; and

WHEREAS, the five claims totaled more than \$131,000 for diminished well water for livestock and homes; and

WHEREAS, an additional fiscal year 2017 claim is pending for property located in the Powder River Basin; and

WHEREAS, the approved claims were completed after the 2015 legislative session and could not be considered for funding; and

WHEREAS, methane gas in drinking water has increased in some wells, reducing pumped water well flow; and

WHEREAS, gas levels can be unsafe in some situations; and

WHEREAS, coal bed methane production has potentially depleted aquifers and reduced pressure in some saturated coal seams, facilitating the release of methane gas; and

WHEREAS, depleted coal bed aquifers can take decades to recover to the levels they were prior to coal bed methane production; and

WHEREAS, depleted coal bed aquifers affect private water wells and can cause a decrease in or absence of water pumped from wells; and

WHEREAS, depleted coal bed aquifers also can result in an absence of flow from artesian or flowing wells; and

WHEREAS, depleted coal bed aquifers continue to produce methane gas in the absence of active coal bed methane industry pumping; and

WHEREAS, gas tends to move up in elevation and potentially migrate from downslope bedrock areas in Wyoming to upslope bedrock areas in Montana and into water wells; and

WHEREAS, coal bed methane resources remain available for future use, and there is a potential for future activities to affect private landowners, creating the potential for more claims; and

WHEREAS, Montana's conservation districts support continued funding for the program; and

WHEREAS, the 2011 Montana Legislature transferred \$8.5 million from the coal bed methane protection account to the guarantee account for distribution to school districts, and money in the account remains subject to legislative fund transfers each session; and

WHEREAS, \$190,000 is the minimum amount necessary to address coal bed methane program budget challenges and represents only about 31% of a fully funded biennial program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer. By June 10, 2017, the state treasurer shall transfer \$190,000 from the orphan share state special revenue account established in 75-10-743 to the coal bed methane protection account provided for in 76-15-904.

Section 2. Appropriation. For the biennium beginning July 1, 2017, there is appropriated \$190,000 from the coal bed methane protection account provided for in 76-15-904 to the department of natural resources and conservation to support the coal bed methane protection program and to address claims approved and pending approval.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2017

CHAPTER NO. 255

[HB 373]

AN ACT GENERALLY REVISING LAWS GOVERNING ACQUISITION AND SALE OF COUNTY PROPERTY; CLARIFYING PROVISIONS FOR PERSONAL PROPERTY AND REAL PROPERTY; PROVIDING THAT TAX-DEED LAND NOT SOLD AT TWO CONSECUTIVE AUCTIONS BE RETAINED BY THE COUNTY; REQUIRING A BOARD OF COUNTY COMMISSIONERS TO ADOPT A RESOLUTION FOR PROCEDURES FOR SELLING, EXCHANGING, AND DONATING REAL PROPERTY; AMENDING SECTIONS 7-8-2201, 7-8-2211, 7-8-2212, 7-8-2213, 7-8-2216, 7-8-2217, 7-8-2231, 7-8-2301, 7-8-2501, 7-8-2513, 7-8-2515, AND 76-6-109, MCA; AND REPEALING SECTIONS 7-8-2202, 7-8-2210, 7-8-2219, 7-8-2233, 7-8-2308, 7-8-2502, 7-8-2504, 7-8-2505, 7-8-2506, 7-8-2507, 7-8-2508, 7-8-2509, 7-8-2511, AND 7-8-2512, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2201, MCA, is amended to read:

“7-8-2201. Authorization for county to obtain personal property. The board of county commissioners ~~has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to may, subject to the provisions of this part,~~ purchase, receive by donation, or lease any real or personal property necessary for the use of the county and ~~to preserve, take care of, manage, and control the same.”~~

Section 2. Section 7-8-2211, MCA, is amended to read:

“7-8-2211. Authorization to sell and exchange county property. (1) Boards of county commissioners of this state ~~have the power to may, subject to the provisions of this part,~~ sell, trade, or exchange any real or personal property, however acquired, belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

(2) Whenever a county purchases equipment, as provided in 7-5-2301 and 7-5-2303 through 7-5-2308, county equipment that is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal, as provided in 7-8-2214, or may be sold at public auction, as provided in 7-8-2212, in the discretion of the board.

(3) Any sale, trade, or exchange of real or personal property must be accomplished under the provisions of this title. ~~In an exchange of real property, the properties must be appraised, and an exchange of county property may not be made unless property received in exchange for the county property is of an equivalent value. If the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.~~

(4) If a county owns property containing a historically significant building or monument, the county may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the county for noncompliance with conditions attached to the transfer.

~~(5) A county may authorize the transfer of ownership of rural improvement district improvements as provided in 7-12-2128."~~

Section 3. Section 7-8-2212, MCA, is amended to read:

"7-8-2212. Notice of sale and public auction required for certain sales. Unless otherwise provided, if real or personal property to be sold is reasonably of a value in excess of \$2,500, the sale must be at public auction at a site determined by the board of county commissioners after notice by publication as provided in 7-1-2121. ~~Property described in 7-8-2211(4) is not subject to the requirements of this section."~~

Section 4. Section 7-8-2213, MCA, is amended to read:

"7-8-2213. Terms of sale. (1) ~~Except as provided in 7-8-2211(4), a~~ A sale under this part must be for cash or on terms that the board of county commissioners may approve, provided that at least 20% of the purchase price is paid in cash. All deferred payments on the purchase price of any *personal* property sold must bear interest at the rate of 6% a year, payable annually, and may be extended over a period of not more than 5 years.

(2) ~~Subject to 7-8-2211(4), a~~ A sale may not be made at public auction or to any school district without public auction for less than 90% of the appraised value.

(3) ~~Subject to 7-8-2211(4), the~~ *The* title to any property sold under the provisions of 7-8-2211 through 7-8-2220 *this part* may not pass from the county until the purchaser or the purchaser's assigns have paid the full amount of the purchase price into the county treasury for the use and benefit of the county."

Section 5. Section 7-8-2216, MCA, is amended to read:

"7-8-2216. Sale of county property to school district. (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, ~~belonging that belongs~~ to the county and ~~which that~~ is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which ~~shall must~~ represent a fair market value of ~~such the~~ property.

(2) If the property to be sold to the school district is reasonably of a value in excess of \$2,500, notice of the sale ~~shall must~~ be given by publication as provided in 7-1-2121."

Section 6. Section 7-8-2217, MCA, is amended to read:

"7-8-2217. Procedure for sale of property of lesser value. (1) If the *personal* property to be sold is valued at less than \$2,500, it may be sold at either a public or private sale as the board of county commissioners determines to be to the best interests of the county.

(2) If the property is sold at public sale, notice must be given as provided in 7-1-2121.

(3) *The board may, after a public hearing noticed as provided in 7-1-2121, adopt a policy for the sale of personal property valued at less than \$2,500."*

Section 7. Section 7-8-2231, MCA, is amended to read:

"7-8-2231. Authorization to lease county property. (1) The board of county commissioners has jurisdiction and power, under limitations and restrictions that are prescribed by law, to lease and transfer county property, however acquired, that is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot

be had. The leases must be made in a manner and for purposes that, in the judgment of the board, are best suited to advance the public benefit and welfare.

(2) Except as provided in ~~7-8-2233~~ and 7-32-2201(5):

(a) all property must be leased subject to sale by the board; and

(b) a lease may not be for a period to exceed 10 years.”

Section 8. Section 7-8-2301, MCA, is amended to read:

“7-8-2301. Disposal of county tax-deed land. (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to enter an order to:

(a) sell the land at public auction;

(b) donate the land to a municipality, as provided in subsection (3), if the land is within the incorporated boundaries of the municipality;

(c) donate the land or sell the land at a reduced price to a corporation as provided in subsection (3); or

(d) retain the land for the county as provided in subsection (3).

(2) When tax-deed land is to be sold, the sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county’s costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.

(3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7-8-2303:

(a) sell the land as provided in subsections (2) and (4);

(b) donate the land to a municipality with the consent of the municipality;

(c) donate the land or sell the land at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements;

(d) retain the land for the county pursuant to ~~7-8-2501~~.

(4) If bids are not received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the sales price of the land determined under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were not any qualifying bids for the land, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the sales price that was fixed for the original auction under subsection (1)(a) *land is retained by the county and is subject to the provisions of part 25.*

(5) If a bid is not received at the sale conducted under subsection (4), the board may dispose of the land as provided in ~~7-8-2218~~ *part 25.*

(6) Notwithstanding the amount of the sales price fixed by the board prior to the auction conducted under subsection (1)(a), if the successful sale bidder is the delinquent taxpayer or the taxpayer’s successor in interest, the taxpayer’s

agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.

(7) Land that is transferred pursuant to subsection (3)(c) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 9. Acquisition of real property. The board may purchase, receive by donation, or retain as provided in part 25 any real property that the board determines to be necessary or useful for the operation and management of the county.

Section 10. Appraisal required for certain purchases of real property or conservation easements. (1) Unless otherwise provided by law, a county may not purchase real property in an amount in excess of \$20,000 or a conservation easement using public funds in an amount in excess of \$80,000 unless the value of the property or conservation easement has been previously estimated by:

(a) a disinterested certified general real estate appraiser selected by the county commission, county attorney, and landowner; or

(b) three disinterested citizens of the county appointed by the district judge.

(2) A county may not pay more than the appraised value for the real property or conservation easement.

Section 11. Authorization to sell real property – resolution required – contents of resolution – hearing required. (1) The board shall, after holding a public hearing noticed as provided in 7-1-2121, adopt a resolution providing for sale and disposition of county real property. The resolution must include:

(a) approved locations for sales, including whether sales may be conducted by use of an internet website or other online location;

(b) a requirement that all sale locations be accessible to the public;

(c) types of sales for which public auction is required;

(d) who may conduct a sale or auction;

(e) procedures for issuing permits, leases, or licenses, including:

(i) the terms, conditions, and processes for issuance of permits, leases, and licenses;

(ii) authorization to enter into agreements with entities to which permits, leases, or licenses may be issued;

(iii) a prohibition on a lease being made for an amount less than the amount that would have been collected if taxes on the real property had been levied; and

(iv) the process for authorizing a lessee to place improvements on the property;

(f) how sales will be noticed if the board intends to provide notice in addition to notice by publication as required in 7-1-2121;

(g) how property retained by the county will be administered and maintained; and

(h) any other provision that the board considers to be necessary for the disposition of property in a manner that is in the best interests of the county and its citizens.

(2) In adopting the resolution, consideration must be given to multiple-use management.

(3) Provisions in the resolution regarding exchanges or donations of real property must be in compliance with [section 12].

Section 12. Exchange or donation of real property – appraisal required. (1) Subject to the provisions of this section and a resolution adopted pursuant to [section 11], the board may make trades, exchanges, or donations of real property owned by the county.

(2) In an exchange of real property, the properties must be appraised and an exchange of county property may not be made unless property received in exchange for the county property is of an equivalent value. If the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.

(3) If a county owns property containing a historically significant building or monument, the county may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its current or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the county for noncompliance with conditions attached to the transfer.

(4) A county may authorize the transfer of ownership of rural improvement district improvements as provided in 7-12-2128.

(5) A county may donate real property or sell the property at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. After the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

Section 13. Section 7-8-2501, MCA, is amended to read:

“7-8-2501. Purposes of part. The purposes of this part are:

~~(1) to authorize a board of county commissioners to acquire real property and to establish criteria for the classification of unsold tax-deed lands and other county-owned lands, however acquired, and to classify such lands for retention or disposal in accordance with such criteria so that county-owned lands shall be procedures for the disposal of real property so that the property is used or disposed of in the best interests of the county and for the public benefit and welfare.;~~

~~(2) to encourage the application of a multiple-use principle in the utilization and administration of such lands so that the administration of lands classified for retention can be coordinated with land use planning, zoning, grazing and agricultural land improvement, fish and wildlife habitat improvement and enhancement, recreation, access to other intermingled or adjacent multiple-use areas, and for any other appropriate uses which are in the best interests of the county or which will advance the public benefit and welfare; and~~

~~(3) to grant sufficient powers to the board to enable the board to achieve the foregoing purposes.”~~

Section 14. Section 7-8-2513, MCA, is amended to read:

“7-8-2513. Appraisal of land required – exception – challenge – restrictions. (1) The county commissioners shall, before they sell, exchange, or lease lands *with an estimated value of more than \$20,000* under the provisions of this part, ~~cause the lands to be have the lands~~ appraised by a ~~qualified, independent person, who may be but is not required to be an employee of the department of revenue;~~ *disinterested certified general real estate appraiser* to determine the value of the lands for the purpose of the sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease is considered an initial lease if the renewal is for a term exceeding 5 years.

(3) The board of county commissioners may lease mineral interests in land, whether the interests are severed or not, without an appraisal as required by subsection (1).

(4) *A taxpayer who believes that the appraised value under this section is less than the actual value of the property may challenge the appraised value. The procedure provided in 7-8-2215 must be followed when a challenge of the appraised value of real property under this part is filed.*

(5) *Except as otherwise provided by law, the board of county commissioners may not under the provisions of this part sell, exchange, or lease lands appraised pursuant to subsection (1) for less than the appraised value.”*

Section 15. Section 7-8-2515, MCA, is amended to read:

“7-8-2515. Apportionment and distribution of revenues from land.

~~AH (1) Except as provided in subsection (2), all proceeds from any use or disposition of lands pursuant to the terms of this part shall be apportioned and distributed according to the provisions of 7-8-2306 must be deposited in the county’s general fund.~~

(2) Revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication.”

Section 16. Section 76-6-109, MCA, is amended to read:

“76-6-109. Powers of public bodies – county real property acquisition procedure maintained. (1) A public body has the power to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and use grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other

facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state, a city, town, or other municipality, or a county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, subject to subsection (3); and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Property taxes levied to pay the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

(a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;

(b) forest land as defined in 15-44-102;

(c) all agricultural improvements on agricultural land referred to in subsection (3)(a);

(d) all noncommercial improvements on forest land referred to in subsection (3)(b); and

(e) agricultural implements and equipment described in 15-6-138(1)(a).

(4) This chapter does not supersede the provisions of *7-8-2202 Title 7, chapter 8, parts 22 and 25.*

Section 17. Repealer. The following sections of the Montana Code Annotated are repealed:

7-8-2202. Appraisal required for certain purchases of real property or conservation easements.

7-8-2210. Authorization to dedicate park land.

7-8-2219. Exchange or donation of county land -- failure to make sale.

7-8-2233. Special provisions relating to coal leases.

7-8-2308. Sale or donation of land valued at less than \$50 and land not acquired by tax deed.

7-8-2502. Application of part.

7-8-2504. Classification of county land.

7-8-2505. Rules for administration of county lands.

7-8-2506. Advisory committee.

7-8-2507. Land management alternatives.

7-8-2508. Details relating to leases, permits, and licenses.

7-8-2509. Improvements on leaseholds.

7-8-2511. Procedure for sale of county lands.

7-8-2512. Procedure to exchange county lands.

Section 18. Codification instruction. [Sections 9 through 12] are intended to be codified as an integral part of Title 7, chapter 8, part 25, and the provisions of Title 7, chapter 8, part 25, apply to [sections 9 through 12].

Approved May 3, 2017

CHAPTER NO. 256

[HB 381]

AN ACT REQUIRING SCHOOL DISTRICT TRUSTEES TO ADDRESS SUICIDE PREVENTION AND RESPONSE; PROVIDING IMMUNITY; AMENDING SECTION 20-7-1310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-1310, MCA, is amended to read:

“20-7-1310. Youth suicide awareness and prevention training. (1) This section may be cited as the “Suicide Awareness and Prevention Training Act”.

(2) The office of public instruction shall provide guidance and technical assistance to Montana schools on youth suicide awareness and prevention training materials. All training materials offered must be approved by the office of public instruction, meet the standards for professional development in the state, and be periodically reviewed by a qualified person or committee for consistency with generally accepted principles of youth suicide awareness and prevention training.

(3) The legislature recommends that youth suicide awareness and prevention training be made available annually to each employee of a school district and to staff of the office of public instruction who work directly with any students enrolled in Montana public schools. The training must be provided at no cost to the employee. The training may be offered through any method of training identified in subsection (4).

(4) The legislature recommends that employees under subsection (3) take at least 2 hours of youth suicide awareness and prevention training every 5 years. Appropriate methods for delivery of the training include:

- (a) in-person attendance at a live training;
- (b) videoconference;
- (c) an individual program of study of designated materials;
- (d) self-review modules available online; and
- (e) any other method chosen by the local school board that is consistent with professional development standards.

(5) *The trustees of a school district shall establish policies, procedures, or plans related to suicide prevention and response.*

(6) *No cause of action may be brought for any loss or damage caused by any act or omission resulting from the implementation of the provisions of this section, or resulting from any training, or lack of training, related to this section. Nothing in this section shall be construed to impose a specific duty of care.”*

Section 2. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved May 3, 2017

CHAPTER NO. 257

[HB 386]

AN ACT PROVIDING THAT PHYSICAL THERAPY MAY BE PRACTICED THROUGH TELEMEDICINE; DEFINING "TELEMEDICINE"; AND AMENDING SECTION 37-11-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-101, MCA, is amended to read:

"37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of physical therapy examiners provided for in 2-15-1748.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(5) "Physical therapist assistant" or "assistant" means a person who:

(a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;

(b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings, *in person or through telemedicine*, to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) "*Telemedicine*" has the meaning provided in 33-22-138.

~~(11)~~(12) “Topical medications” means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law.”

Approved May 3, 2017

CHAPTER NO. 258

[HB 387]

AN ACT REVISING LAWS RELATING TO THE CONTINUUM OF CARE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES; AUTHORIZING THE CONTINUED USE OF A 12-BED SECURE FACILITY AS A COMPONENT OF THE CONTINUUM OF CARE; EXTENDING THE CLOSURE DATE FOR THE MONTANA DEVELOPMENTAL CENTER; PROVIDING A CAP ON THE CENSUS AT THE MONTANA DEVELOPMENTAL CENTER; PROVIDING DIRECTION TO THE DEPARTMENT; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 53-20-126, MCA; AMENDING SECTIONS 1 AND 3, CHAPTER 444, LAWS OF 2015; REPEALING SECTION 2, CHAPTER 444, LAWS OF 2015; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this part, the following definitions apply:

(1) “Center” means the intensive behavior center provided for in [section 2].

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Developmental disability” has the meaning provided in 53-20-102.

Section 2. Intensive behavior center limitations. (1) There is a state-operated 12-bed intensive behavior center for individuals with a developmental disability who are in need of intensive treatment because of continuous or repeated behaviors that pose an imminent risk of serious harm to self or others.

(2) The center shall provide a program of active treatment in a secure residential environment. The treatment must:

(a) address the behavioral issues of each resident; and

(b) foster for each resident the transition to and residency in less restrictive service settings.

(3) The center may serve only individuals for whom the department has asked a county attorney to file a petition alleging the individual is in need of the services and secure setting of the center and requesting that the individual be committed to the center for services. The initial period of commitment to the center may not exceed 90 days. If recommitment is sought pursuant to 53-20-128, each subsequent recommitment period may not exceed 90 days.

Section 3. Licensing. The intensive behavior center operated pursuant to [sections 1 through 4] must be licensed as an intermediate care facility for the developmentally disabled in accordance with 50-5-238.

Section 4. Rulemaking authority. The department may adopt rules to carry out [sections 1 through 4], including but not limited to rules for eligibility requirements for admission to the facility.

Section 5. Section 53-20-126, MCA, is amended to read:

“53-20-126. Maximum period of commitment or treatment plan. The court order approving the commitment to a residential facility or the imposition of the community treatment plan must specify the maximum period of time for which the person is committed or for which a community treatment plan is imposed. *The Except as provided in [section 2] for an individual committed to the intensive behavior center, the maximum period may not exceed 90 days for commitment to a residential facility or 1 year for the imposition of a community treatment plan.*”

Section 6. Section 1, Chapter 444, Laws of 2015, is amended to read:

“Section 1. Legislative intent – direction to department of public health and human services. It is the intent of the legislature to provide services to individuals with developmental disabilities in the community, as established in 53-20-101 and 53-20-301, and to close the Montana developmental center. To accomplish this purpose, the legislature directs the department of public health and human services to:

(1) ~~in conjunction with the transition planning committee established in [section 2], develop and implement a plan to close the Montana developmental center by June 30, 2017 2019;~~

(2) transfer funds as authorized by 17-7-139, 53-20-214, and federal laws and regulations to develop the services needed to move residents out of the Montana developmental center and into community-based services; ~~and; and~~

(3) ~~transition most residents out of the Montana developmental center and into community-based services by December 31, 2016. As part of this transition, the legislature intends for the department of public health and human services to:~~

(a) ~~actively pursue the timely discharge of Montana developmental center residents into community-based services; and~~

(b) ~~work with community providers to develop necessary services;~~

(3) *cap the census at the Montana developmental center at 24 residents and continue to transition residents out of the Montana developmental center and into community-based services. As part of this transition, the legislature intends for the department of public health and human services to:*

(a) *actively pursue the timely discharge of Montana developmental center residents into community-based services;*

(b) *work with community providers to develop necessary services; and*

(c) *cap the census at the intensive behavior center provided for in [section 2] at 12 residents after June 30, 2019.”*

Section 7. Section 3, Chapter 444, Laws of 2015, is amended to read:

“Section 3. Transition planning – department ~~Department of public health and human services responsibilities – rulemaking.~~ The department of public health and human services shall:

(1) ~~provide members of the transition planning committee with necessary information and staff support to carry out the committee’s duties;~~

(2) ~~implement a plan for the closure of the Montana developmental center based on recommendations from the transition planning committee; and~~

(3) ~~designate by rule the criteria that a community-based service must meet to be designated as a residential facility.”~~

Section 8. Direction to department of public health and human services concerning closure of Montana developmental center. The legislature directs the department of public health and human services to:

(1) use the assessment and stabilization unit at the Montana developmental center campus as the intensive behavior center provided for in [section 2];

(2) continue to actively discharge individuals from the Montana developmental center during the biennium beginning July 1, 2017; and

(3) close the Montana developmental center on or before June 30, 2019. The department is authorized to use two of the cottages located on the campus of the Montana developmental center for residential purposes until June 30, 2018, and is authorized to use one cottage for residential purposes until June 30, 2019.

Section 9. Repealer. Section 2, Chapter 444, Laws of 2015, is repealed.

Section 10. Appropriation. There is appropriated \$500,000 from the general fund to the department of public health and human services for the fiscal year beginning July 1, 2017, for a Boulder development fund to be administered by the director of the department.

Section 11. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to [sections 1 through 4].

Section 12. Effective date. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 10] is effective July 1, 2017.

Approved May 3, 2017

CHAPTER NO. 259

[HB 390]

AN ACT GENERALLY REVISING EDUCATION FUNDING LAWS; REQUIRING THAT LOCAL PROPERTY TAXES ARE REDUCED IN THE FOLLOWING YEAR WHEN AN ANTICIPATED ENROLLMENT INCREASE DOES NOT MATERIALIZE; TEMPORARILY REDIRECTING AND STATUTORILY APPROPRIATING TECHNOLOGY FUNDING TO E-RATE BROADBAND MATCHING FUNDS; AMENDING SECTIONS 20-9-314 AND 20-9-534, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-314, MCA, is amended to read:

“20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(1)(d), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an anticipated unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the anticipated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage by which the adjusted enrollment exceeds the enrollment used for the budgeted average number belonging; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 4% or 40 students, whichever is less.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the maximum allowable increase to the average number belonging is equal to the adjusted enrollment as determined by the superintendent of public instruction in subsection (3) minus the sum of:

(a) the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year; and

(b) the lesser of 40 students or 4% of the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than the enrollment used to determine the budgeted ANB, the superintendent of public instruction shall ~~revise the total per-ANB entitlement and basic entitlement calculations~~ *recalculate the district's BASE budget and maximum budget limitations and BASE aid* using the actual enrollment in place of the adjusted enrollment. ~~And:~~

(i) ~~total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments~~ *any BASE aid received by the district in excess of the amount recalculated is an overpayment* subject to the refund provisions of 20-9-344(4); and

(ii) *any revenue received by the district from BASE budget and over-BASE budget levies increased by the difference between the adjusted enrollment and the actual enrollment is an overpayment and must be used for reducing BASE budget and over-BASE budget levies in the ensuing school fiscal year."*

Section 2. Section 20-9-534, MCA, is amended to read:

"20-9-534. Statutory appropriation for school technology purposes.

(1) The amount of \$1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 ~~for grants for school technology purposes to the department of commerce for providing funds for schools to use as state matching funds for special construction under the federal e-rate broadband program pursuant to 47 CFR 54.505, provided that none of the state matching funds may be used by schools for self-construction of their own or portions of their own networks.~~

(2) ~~By the third Friday in July, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533."~~

Section 3. Coordination instruction. (1) If [this act], Senate Bill No. 260, and Senate Bill No. 307 are passed and approved, [Section 1] of Senate Bill No. 260 must be replaced with the following language:

“Section 1. School facilities fund – school major maintenance aid special revenue account. (1) There is a school facilities fund administered by the department of administration. Pursuant to 17-5-703, a percentage of coal severance taxes received by the state are deposited into this fund. Earnings not transferred to the school major maintenance aid account as provided in subsection (2) must be retained in the school facilities fund.

(2) The school major maintenance aid account established in [section 8 of Senate Bill No. 307] receives earnings from the school facilities fund as provided in 17-5-703.

(3) A school district that receives funds from the school major maintenance aid account shall, within 30 days of receiving the funds, file with the office of the superintendent of public instruction a document acknowledging it has received funds from the coal severance tax trust fund.”

(2) If [this act], Senate Bill No. 260, and Senate Bill No. 307 are passed and approved, the section in Senate Bill No. 260 amending 17-5-703 is void and 17-5-703 must be amended as follows:

“17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a big sky economic development fund; and

(g) *a school facilities fund.*

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections ~~(3) and (4)~~ (4) and (5).

(3) (a) ~~Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.~~

~~(b) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.~~

~~(c)(a) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.~~

~~(d)(b) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized~~

under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(4) (a) *Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in [section 1(1) of Senate Bill 260] 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is \$200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified pursuant to subsection (2) to be retained in the fund.*

(b) *The state treasurer shall monthly transfer from the school facilities fund to the account established in [section 8 of Senate Bill No. 307] the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in [section 8 of Senate Bill No. 307] must be retained by the school facilities fund.*

~~(4)~~(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

~~(5)~~(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2031--secs. 1 through 3, Ch. 305, L. 2015.)

17-5-703. (Effective July 1, 2031) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; ~~and~~

(e) a big sky economic development fund; *and*

(f) *a school facilities fund.*

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections ~~(3) and (4)~~ (4) and (5).

~~(3) (a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance~~

tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(4) (a) *Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in [section 1(1) of Senate Bill No. 260] 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is \$200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified pursuant to subsection (2) to be retained in the fund.*

(b) *The state treasurer shall monthly transfer from the school facilities fund to the account established in [section 8 of Senate Bill No. 307] the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in [section 8 of Senate Bill No. 307] must be retained by the school facilities fund.*

(4)(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(5)(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.”

(3) If [this act], Senate Bill No. 260, and Senate Bill No. 307 are passed and approved, then up to \$2 million of the earnings transferred from the school facilities fund provided for in [section 1(1) of Senate Bill No. 260] to the account established in [section 8 of Senate Bill No. 307] is appropriated in fiscal year 2019 to the office of public instruction for the uses described in [section 8 of Senate Bill No. 307].

Section 4. Effective date. [This act] is effective July 1, 2017.

Section 5. Applicability. [This act] applies to school fiscal years beginning on or after July 1, 2017.

Section 6. Termination. [Section 2] terminates June 30, 2019.

Approved May 3, 2017

CHAPTER NO. 260

[HB 393]

AN ACT REVISING THE CURRICULUM HOURS FOR SCHOOLS OF BARBERING AND COSMETOLOGY; AND AMENDING SECTIONS 37-31-304 AND 37-31-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-304, MCA, is amended to read:

“37-31-304. Qualifications of applicants for license to practice. (1)

Before a person may practice:

(a) barbering, the person shall obtain a license to practice barbering from the department;

(b) barbering nonchemical, the person shall obtain a license to practice barbering nonchemical from the department;

(c) cosmetology, the person shall obtain a license to practice cosmetology from the department;

(d) electrology, the person shall obtain a license to practice electrology from the department;

(e) manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology; or

(f) esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) (i) To be eligible to take the examination to practice barbering or barbering nonchemical, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception.

(ii) An applicant to practice barbering must have completed a course of study of at least ~~1,500~~ 1,100 hours in a licensed barbering school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board by rule.

(iii) An applicant to practice barbering nonchemical must have completed a course of study of at least ~~1,000~~ 900 hours in a licensed barbering or barbering nonchemical school, not including hours applicable to the use of chemicals to wave, straighten, color, bleach, or highlight hair, and must have received a diploma from the barbering or barbering nonchemical school or must have completed the course of study in barbering or barbering nonchemical at a school of cosmetology authorized to offer a course of study in barbering or barbering nonchemical as prescribed by the board by rule.

(b) A person qualified under subsection (2)(a) shall file an application and deposit the application fee with the department and pass an examination as to fitness to practice barbering or barbering nonchemical.

(c) The board shall issue a license to practice barbering or barbering nonchemical, without examination, to a person licensed in another state if the board determines that:

(i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and

(ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

(3) (a) To be eligible to take the examination to practice cosmetology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least ~~2,000~~ 1,500 hours in a licensed cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board by rule.

(b) A person qualified under subsection (3)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

(5) (a) To be eligible to take the examination to practice manicuring, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board in a licensed school of cosmetology or a licensed school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (5)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice manicuring.

(6) (a) To be eligible to take the examination to practice esthetics, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a licensed school of cosmetology or a licensed school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (6)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice esthetics.”

Section 2. Section 37-31-311, MCA, is amended to read:

“37-31-311. Schools – license – requirements – bond – curriculum.

(1) A person, firm, partnership, corporation, or other legal entity may not operate a school for the purpose of teaching barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring for compensation unless

licensed by the department. Application for the license must be filed with the department on an approved form.

(2) A school for teaching barbering or barbering nonchemical may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering or barbering nonchemical.

(c) It maintains a school term of not less than ~~1,500~~ *1,100* hours for barbering and not less than ~~1,000~~ *900* hours for barbering nonchemical and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board by rule.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering or barbering nonchemical.

(3) A school for teaching cosmetology may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than ~~2,000~~ *1,500* hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board by rule.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrology may not be granted a license unless the school maintains a school term and a course of practical training and technical instruction prescribed by the board, and possesses apparatus and equipment necessary for teaching electrology as prescribed by the board by rule.

(5) A school for teaching manicuring may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of manicuring.

(b) It maintains a school term and a course of practical training and technical instruction as prescribed by the board by rule.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(6) A school for teaching esthetics may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

(7) Licenses for schools of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring may be refused, revoked, or suspended as provided in 37-31-331.

(8) A teacher or student teacher may not be permitted to practice barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring on the public in a school of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(9) The board may make further rules necessary for the proper conduct of schools of barbering, barbering nonchemical, cosmetology, electrology, esthetics, and manicuring.

(10) The board shall require the person, firm, partnership, corporation, or other legal entity operating a school of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring to furnish a bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board by rule.

(11) A professional salon or shop may not be operated in connection with a school of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring.

(12) The board may, by rule, establish a suitable curriculum for teachers' training in licensed schools of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring."

Approved May 3, 2017

CHAPTER NO. 261

[HB 407]

AN ACT REVISING SANITATION IN SUBDIVISIONS RULE REQUIREMENTS TO ALLOW FOR A WELL ISOLATION ZONE FOR AN INDIVIDUAL WATER SYSTEM WELL TO EXTEND OUTSIDE OF THE BOUNDARIES OF A SUBDIVISION UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 76-4-102 AND 76-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid

waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

(2) "Board" means the board of environmental review.

(3) "Department" means the department of environmental quality.

(4) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(5) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

(6) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(7) "*Individual water system*" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.

~~(7)~~(8) "Mixing zone" has the meaning provided in 75-5-103.

~~(8)~~(9) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

~~(9)~~(10) "Public water supply system" has the meaning provided in 75-6-102.

~~(10)~~(11) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

~~(11)~~(12) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

~~(12)~~(13) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

~~(13)~~(14) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

~~(14)~~(15) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

~~(15)~~(16) "Solid waste" has the meaning provided in 75-10-103.

~~(16)~~(17) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

~~(17)~~(18) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

~~(18)~~(19) "Well isolation zone" means the area within a 100-foot radius of a water well."

Section 2. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or well isolation zone outside the boundaries of the proposed subdivision where the drainfield or well is located. A mixing zone or a well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). *Nothing in this section is intended to prohibit the extension, construction, reconstruction, or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.*

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than 45 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 55 days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622.”

Approved May 3, 2017

CHAPTER NO. 262

[HB 426]

AN ACT PROTECTING PREPAID TELEPHONE ACCOUNTS USED BY INMATES IN STATE PRISONS FROM EXPIRATION; REQUIRING CONDITIONS OF USE AND DISCLOSURE; PROVIDING RULEMAKING; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Telephone account requirements for state prisons – protected accounts – disclosure required – rulemaking – definitions.

(1) A state prison that contracts with a telecommunications service provider to provide telecommunications services for inmates shall, to the extent feasible, contract with a telecommunications service provider to provide communications services for inmates that:

(a) provides public safety precautions required by the department of corrections;

(b) prohibits expiration of prepaid minutes or charges;

(c) does not charge additional usage or dormancy fees;

(d) does not charge excessive intrastate fees that are greater than 10 cents a minute;

(e) does not require monthly usage fees; and

(f) allows rollover of unused, prepaid minutes into the next month unless the inmate for whom the account was set up is no longer able to use the telephone account, whether for disciplinary reasons or other reasons specified by department rule. No refund is required for unexpired minutes subject to this subsection (1)(f).

(2) Every contract entered into by a state prison for communications services under subsection (1) must require the telecommunications service provider to notify the purchaser of a prepaid telephone account of any fees or refunds that are available for unused minutes on a prepaid telephone card and mail the refund to the purchaser’s address of record.

(3) The department of corrections has rulemaking authority to implement this section and shall notify the public service commission of the allowable rate that a telecommunications service provider may charge for intrastate calls under contract with the department of corrections.

(4) For purposes of this section, the following definitions apply:

(a) “Prepaid telephone account” means a system, whether purchased as a calling card or set up as an account with a telecommunications service provider to provide telephonic connections in which the purchaser pays for minutes prior to use. The term does not include a lifeline account, defined under 47 CFR 54.401, for which a telecommunications carrier receives universal service support.

(b) “State prison” has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

(c) “Telecommunications service provider” has the meaning provided for “operator service provider” in 69-3-1102.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 30, part 1, and the provisions of Title 53, chapter 30, part 1, apply to [section 1].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective July 1, 2017.

Approved May 3, 2017

CHAPTER NO. 263

[HB 428]

AN ACT REVISING RETAIL BEER LICENSING LAWS RELATED TO LOTTERIES; PROVIDING CONDITIONS FOR USE; REQUIRING A PROCESSING AND ORIGINAL LICENSE FEE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 16-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-105, MCA, is amended to read:

“16-4-105. Limit on retail beer licenses – wine license amendments – limitation on use of license – exceptions – lottery – rulemaking. (1) Except as otherwise provided by law in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, ~~except that:~~ *subject to the provisions in subsections (1)(a) through (1)(e).*

(a) ~~the~~ *The* number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

(b) ~~the~~ *The* number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of

5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) ~~retail~~ *Retail* beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) ~~the~~ *The* limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) ~~the~~ *The* number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997.

(4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15,

2005, may not be transferred to another location within the city quota area for 5 years from the date of the annexation.

(5) (a) *When the department determines that a quota area is eligible for an additional retail beer license as provided in this section, the department shall advertise the availability of the license in the quota area for which the license is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.*

(b) *The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time processing fee set by the department by rule. An applicant's ranking may not be sold or transferred to another person or business entity. An applicant's ranking applies only to the intended license advertised by the department or to the number of licenses determined to be available for the lottery when there are more applicants than licenses available. The department shall determine an applicant's qualifications for a retail beer license awarded by lottery prior to the award of a license by lottery.*

(c) *A successful lottery applicant shall pay to the department a \$25,000 original license fee, and in subsequent years pay the annual fee for the license as provided in 16-4-501.*

(d) (i) *The successful lottery applicant is subject to forfeiture of the license and the original license fee if the successful lottery applicant:*

(A) *enters into a concession agreement, as defined in rule, for the license awarded by lottery in the first 5 years;*

(B) *transfers a license awarded by lottery within 5 years of receiving the license; or*

(C) *does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the lottery winner provides evidence the delay in use is for reasons outside the applicant's control.*

(ii) *In the case of forfeiture, the department shall offer the license to the next eligible ranked applicant in the lottery.*

(6) *The department may adopt rules to implement this section."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2017

CHAPTER NO. 264

[HB 429]

AN ACT EXTENDING THE WATER RIGHT PERMIT EXEMPTION FOR CERTAIN OPERATIONS AND TRAINING OF A LOCAL GOVERNMENTAL FIRE AGENCY; AND AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-330, 85-2-341, 85-2-343, AND 85-2-344, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-113, MCA, is amended to read:

"85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any

action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, *including for emergency fire training and emergency fire-related operations*, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection (4).”

Section 2. Section 85-2-306, MCA, is amended to read:

“85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person’s

intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, *emergency fire training, and emergency fire-related operations*, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did

not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.”

Section 3. Section 85-2-330, MCA, is amended to read:

“85-2-330. Basin closure – exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) domestic use from surface water or pursuant to 85-2-306;
 (ii) stock use; or
 (iii) use of surface water by or for a municipality;
 (d) an application to store water during high spring flows;
 (e) temporary emergency appropriations, *including for emergency fire training and emergency fire-related operations*, as provided for in 85-2-113(3);
 or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387;
 or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f)."

Section 4. Section 85-2-341, MCA, is amended to read:

"85-2-341. Basin closure – exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) domestic use from surface water or pursuant to 85-2-306;

(ii) stock use; or

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows;

(e) an application submitted pursuant to 85-20-1401, Article VI;

(f) temporary emergency appropriations, *including for emergency fire training and emergency fire-related operations*, as provided for in 85-2-113(3);

(g) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387;
 or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(g) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(f), or (2)(g)."

Section 5. Section 85-2-343, MCA, is amended to read:

“85-2-343. Basin closure – exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) domestic use from surface water or pursuant to 85-2-306;

(ii) stock use; or

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage;

(f) an application submitted pursuant to 85-20-1401, Article VI;

(g) temporary emergency appropriations, *including for emergency fire training and emergency fire-related operations*, as provided for in 85-2-113(3); or

(h) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(h) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), (2)(g), or (2)(h).”

Section 6. Section 85-2-344, MCA, is amended to read:

“85-2-344. Bitterroot River subbasin temporary closure – definitions – exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) “Bitterroot River basin” means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as “Basin 76H”.

(c) “Bitterroot River subbasin” means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as “Subbasin 76HA”;

(ii) the north end subbasin, designated as “Subbasin 76HB”;

(iii) the east side subbasin, designated as “Subbasin 76HC”;

(iv) the southeast subbasin, designated as “Subbasin 76HD”;

(v) the south end subbasin, designated as “Subbasin 76HE”;

(vi) the southwest subbasin, designated as “Subbasin 76HF”;

(vii) the west central subbasin, designated as “Subbasin 76HG”; or

(viii) the northwest subbasin, designated as “Subbasin 76HH”.

(2) As provided in 85-2-319, the department may not grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (5) of this section, except for:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for use of surface water by or for a municipality;

(c) temporary emergency appropriations, *including for emergency fire training and emergency fire-related operations*, pursuant to 85-2-113(3);

(d) an application submitted pursuant to 85-20-1401, Article VI;

(e) an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more; or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), or (2)(f).

(5) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4).”

Approved May 3, 2017

CHAPTER NO. 265

[HB 458]

AN ACT REQUIRING MONITORING OF MONTANA DEVELOPMENTAL CENTER RESIDENTS, INCLUDING THOSE WHO HAVE TRANSITIONED OUT OF THE FACILITY AS REQUIRED UNDER SENATE BILL NO. 411 OF 2015; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 53-20-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings – purpose. (1) The legislature finds that the Montana developmental center has served as a placement of last resort for seriously developmentally disabled individuals, many of whom have co-occurring mental health conditions.

(2) The legislature further finds that as the department has been carrying out the process of closing the Montana developmental center pursuant to Chapter 444, Laws of 2015, family members of Montana developmental center residents, community service providers, and community members have expressed concern that community facilities may not be equipped to provide appropriate care and treatment for some of the residents.

(3) The legislature further finds that family members have expressed concern that their developmentally disabled relatives may not maintain the progress they have made in treatment at the Montana developmental center as they move to new and unfamiliar settings.

(4) It is the intent of the legislature that the department monitor the skills, abilities, and behaviors of Montana developmental center residents while they are in the care and custody of the state and as they transition to the community in order to ensure that the individuals remain safe, maintain or improve their skills and abilities, and find a home that provides the most appropriate services in the least restrictive setting possible.

Section 2. Department monitoring of Montana developmental center residents – report to legislature. (1) The department shall monitor:

(a) individuals released from the Montana developmental center and placed in a community home as defined in 53-20-302 for 2 years after placement in a community home; and

(b) for the duration of their residency, individuals who are admitted to and residing at the Montana developmental center.

(2) The department shall evaluate on a quarterly basis behaviors in the following areas to determine whether the skills, abilities, and behaviors of an individual subject to this section have improved, diminished, or remained unchanged:

(a) verbal or nonverbal communication, as appropriate for the individual;

(b) activities of daily living;

(d) emotional well-being;

(e) physical aggression; and

(f) sexually inappropriate behaviors.

(3) The department shall report on the results of the monitoring:

(a) at least quarterly to family members and guardians of the individuals if the family members and guardians are authorized to receive health care information; and

(b) annually to the children, families, health, and human services interim committee. The report to the interim committee may provide information only in an aggregate form and may not contain any individually identifying information.

Section 3. Section 53-20-203, MCA, is amended to read:

“53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the citizens of the state who are persons with developmental disabilities;

(2) initiate a preventive developmental disabilities program that must include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means must be used to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services must include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide by rule for the evaluation of:

(a) persons who apply for services ~~or~~;

(b) persons admitted into a program at a developmental disability facility;
and

(c) *persons residing at or released from the Montana developmental center into a community home, in accordance with the requirements established in [section 2];*

(6) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

(7) require that habilitation plans be developed, implemented, and continuously maintained for all persons with developmental disabilities who are served through a community-based program funded by the state; and

(8) use funds available for cases in which special medical or material assistance is necessary to rehabilitate children with developmental disabilities or children with physical disabilities if the assistance is not otherwise provided for by law.”

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [sections 1 and 2].

Section 5. Applicability. (1) [This act] applies to individuals who are admitted into or residing at the Montana developmental center on or after October 1, 2017, or were released from the Montana developmental center on or after May 6, 2015, and placed in a community home as defined in 53-20-302.

(2) The 2-year time period for monitoring of individuals released from the Montana developmental center into a community home begins:

(a) on October 1, 2017, for individuals who were released from the Montana developmental center on or before October 1, 2017; and

(b) for individuals released after October 1, 2017, on the date of an individual’s release from the Montana developmental center.

Approved May 3, 2017

CHAPTER NO. 266

[HB 466]

AN ACT ALLOWING USE OF CERTAIN CREDIT OR DEBIT CARD PURCHASES TO ESTIMATE AGRICULTURAL USAGE OF SPECIAL FUEL; REQUIRING A RECEIPT THAT IDENTIFIES THE PURCHASER AND ADDRESS OF PURCHASE AS EVIDENCE OF A CREDIT OR DEBIT CARD PURCHASE; AMENDING SECTION 15-70-430, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-430, MCA, is amended to read:

“15-70-430. Estimate allowed for agricultural use – seller’s signed statement acceptable on keylock or cardtroll purchases. (1) (a) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of gasoline or special fuel as indicated by bulk delivery invoices or by evidence of keylock ~~or~~ or cardtroll purchases as an estimate of off-highway use.

(b) *An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of special fuel as indicated by evidence of credit or debit card purchases as an estimate of off-highway use.*

(c) To ensure that the applicant’s use qualifies as agricultural use, the department of transportation may request state or federal income tax information from the applicant or the department of revenue to determine the

ratio of the applicant's gross earned farm income to total gross earned income, excluding unearned income, provided that the department of transportation gives notice to the applicant.

(2) (a) For purposes of application for a refund under subsection (1)(a), the department shall accept, as evidence of keylock or cardtroll purchases, a statement of the sale of gasoline or special fuel with applicable Montana tax that identifies the purchaser and specifically identifies the transaction as a keylock or cardtroll purchase.

(b) *For purposes of application for a refund under subsection (1)(b), the department shall accept, as evidence of credit or debit card purchases, a receipt for the sale of special fuel with applicable Montana tax that identifies the purchaser, the physical address of the dealer, the type of fuel purchased, and the number of gallons purchased and that specifically identifies the transaction as a credit or debit card purchase. Only credit or debit card purchases within 50 miles of the agricultural operation of the applicant are eligible for a refund.*

(3) An applicant may apply for a refund of the applicable tax on gallons of gasoline or special fuel as indicated by bulk delivery invoices or by evidence of keylock, or cardtroll, or credit or debit card purchases according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

(a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the gasoline or special fuel tax;

(b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the gasoline or special fuel tax;

(c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the gasoline or special fuel tax; and

(d) if the ratio is less than 30%, the applicant is not eligible for a refund of the gasoline or special fuel tax under this section.

(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(5) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-426."

Section 2. Effective date. [This act] is effective January 1, 2018.

Approved May 3, 2017

CHAPTER NO. 267

[HB 473]

AN ACT REVISING HIGHWAY FUNDING LAWS; REVISING LAWS CONCERNING THE DEPOSIT AND EXPENDITURE OF HIGHWAY REVENUE; ESTABLISHING A HIGHWAY RESTRICTED ACCOUNT AND A BRIDGE AND ROAD SAFETY AND ACCOUNTABILITY RESTRICTED ACCOUNT; INCREASING THE FUEL TAX AND SPECIAL FUEL TAX; PROVIDING THAT THE NEW REVENUE MUST FUND HIGHWAY PROJECTS AND LOCAL ROAD PROJECTS; PROVIDING FOR A LOCAL GOVERNMENT ROAD MATCH PROGRAM; REQUIRING A PERFORMANCE AUDIT OF THE DEPARTMENT OF TRANSPORTATION; REQUIRING

THE DEPARTMENT OF TRANSPORTATION TO PUBLISH A WEBSITE SHOWING PROJECTS FUNDED WITH THE INCREASED REVENUE; PROVIDING A STATUTORY APPROPRIATION AND AN APPROPRIATION; AMENDING SECTIONS 15-70-101, 15-70-102, 15-70-403, 15-70-404, 15-70-419, 15-70-456, 17-5-903, 17-7-502, 44-1-501, 60-3-201, 60-5-110, 61-3-738, 61-8-204, 61-8-907, 61-10-126, 61-10-225, 61-10-226, AND 75-11-301, MCA; REPEALING SECTION 60-3-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Highway restricted account. (1) There is a highway restricted account in the state special revenue fund provided for in 17-2-102. All interest and income earned on the account must, in accordance with the provisions of 17-2-124, be deposited to the credit of the account and any unexpended balance in the account must remain in the account.

(2) Subject to subsection (4) and 15-70-403(2), all revenue sources provided for in Article VIII, section 6, of the Montana constitution must be deposited in the account, including but not limited to:

(a) all taxes collected under this chapter except as provided in 15-70-403(2)(b);

(b) taxes collected for improperly imported fuel as provided in 15-70-419;

(c) fees collected for temporary special fuel permits as provided in 15-70-456; and

(d) GVW license fees as provided in 61-10-225 and 61-10-226.

(3) Except as provided in subsection (5), the money in the account is restricted and may be used only for the purpose of providing funding:

(a) for statutory refunds and adjustments;

(b) for debt service on highway revenue bonds;

(c) to the department for distribution to local governments as provided in 15-70-101;

(d) to the department for railroad grade crossing protection as provided in 15-70-102;

(e) to the department of justice for expenses of the highway patrol as provided in 44-1-501;

(f) to the department of justice for expenses of the motor vehicle division;

(g) for gasoline tax allocations as provided in 60-3-201;

(h) to the department for administration of the motor carrier services functions;

(i) to the department for the highways in this state selected and designated by the transportation commission provided for in 2-15-2502;

(j) to the department for the collection of fuel taxes;

(k) for driver education, which may not exceed \$10,000; and

(l) for tourist promotion, which may not exceed \$10,000.

(4) (a) The portion of money collected from all revenue sources provided for in Article VIII, section 6, of the Montana constitution on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102.

(b) The department is authorized to maintain a suspense account for gasoline and special fuel tax refunds and adjustments.

(5) The money in the account may be appropriated for purposes other than those listed in subsection (3) by a three-fifths vote of the members of each house of the legislature.

Section 2. Bridge and road safety and accountability restricted account. (1) There is a bridge and road safety and accountability restricted account in the state special revenue fund provided for in 17-2-102. All interest and income earned on the account must, in accordance with the provisions of 17-2-124, be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Revenue from the gasoline and special fuels taxes must be deposited in the account pursuant to 15-70-403(2)(b).

(2) The money in the account is restricted as provided in Article VIII, section 6, of the Montana constitution and may be used only for statutory refunds and adjustments and for providing annual funding as follows:

(a) for use by the department of transportation for the construction, reconstruction, maintenance, and repair of highways and bridges in the state selected and designated by the transportation commission:

(i) \$12.5 million for fiscal year 2018; and

(ii) 35% or \$9.8 million, whichever is greater, for fiscal year 2019 and thereafter;

(b) the remainder for the local government road construction and maintenance match program provided for in [section 3].

Section 3. Local government road construction and maintenance match program. (1) There is a local government road construction and maintenance match program to provide funding to cities, towns, counties, and consolidated city-county governments for construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, and bridges as provided in this section.

(2) The department of transportation shall allocate funds provided for in [section 2(2)(b)] collected between January 1 and December 31 of the previous year. The first allocations must be made by March 1, 2018, and allocations must be made each March 1 thereafter. The funds provided for in [section 2(2)(b)] are statutorily appropriated, as provided in 17-7-502, to the department and must be allocated to cities, towns, counties, and consolidated city-county governments in the same proportion and using the same ratios provided for in 15-70-101(2)(b), (2)(c), and (3).

(3) A city, town, county, or consolidated city-county government that requests funds under this section shall match each \$20 requested with \$1 of local government matching funds. The funds distributed in 15-70-101(2) may not be used as matching funds. The matching funds must be used along with the requested funding for construction, reconstruction, maintenance, or repair of rural roads, city or town streets and alleys, or bridges.

(4) A city, town, county, or consolidated city-county government may request a distribution of allocated funds by submitting a request to the department of transportation between March 1 and November 1 of the year the funds were allocated. The request must include:

(a) the amount of funding sought, which may not exceed the amount allocated for that year;

(b) a copy of an adopted resolution to request and accept the funding by the governing body of the city, town, county, or consolidated city-county government. The resolution must identify the source of the matching funds required under subsection (3).

(c) a description of the project or projects to be funded, which must be for construction, reconstruction, maintenance, or repair of rural roads, city or town streets and alleys, or bridges, as a match for federal funds used for the construction of roads and streets that are part of the national, primary, secondary, or urban highway systems, or roads and streets that the city,

town, county, or consolidated city-county government has the responsibility to maintain.

(5) A city, town, county, or consolidated city-county government receiving funds under this section shall award construction projects that exceed the thresholds provided for in 7-5-2301 and 7-5-4302 in a competitive bid process.

(6) Except as provided in subsection (9), the department of transportation shall distribute the funds to the city, town, county, or consolidated city-county government for any request for funds that meets the requirements of subsection (4).

(7) Funds not distributed pursuant to this section must remain in the account provided for in [section 2] and be used for the local government road construction and maintenance match program in future years.

(8) A city, town, county, or consolidated city-county government that receives funding distributed under this section may place all or a part of the funds and the corresponding matching funds in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure. The city, town, county, or consolidated city-county government shall obligate the funds by March 1, 5 years after the year in which the funds were distributed or would have been distributed if not reserved pursuant to subsection (9). Funds not obligated within the 5-year period must be returned to the department and deposited in the account provided for in [section 2] and used as provided in [section 2(2)(b)].

(9) The share of funds allocated to a city, town, county, or consolidated city-county government as provided in subsection (2) may be reserved for the city, town, county, or consolidated city-county government for up to 2 years if the city, town, county, or consolidated city-county government is unable to match the funds as required by subsection (3). To reserve the funds, the city, town, county, or consolidated city-county government shall adopt a resolution as provided in subsection (4)(b) and submit a request to reserve the funds by November 1 of the year after the year in which the department allocated the funds. If the city, town, county, or consolidated city-county government does not request distribution of the funds by November 1 of the fiscal year 2 years after the request to reserve the funds, the funds must be deposited in the account provided for in [section 2] and used as provided in [section 2(2)(b)].

(10) A city, town, county, or consolidated city-county government shall submit an annual report to the department providing information on approved projects, changes to the list of projects funded, and final project costs.

(11) Within 90 days of completion of a project, a city, town, county, or consolidated city-county government shall notify the department of the intent to use the funds for additional projects within the time period provided for in subsection (8) or to remit any unused funds to the department. The unused funds must be deposited in the account provided for in [section 2] and used as provided in [section 2(2)(b)].

Section 4. Audit of department of transportation. (1) By June 30, 2018, there must be a one-time performance audit of the department of transportation provided for in 2-15-2501. The performance audit must be conducted by or at the direction of the legislative auditor and must include but is not limited to:

(a) a comparison of the Montana department of transportation to similar agencies in at least three other similar states or provinces on a quantitative measure, such as dollars spent or highway miles constructed and maintained. The following points of comparison are of specific interest:

- (i) number of full-time equivalent employees;
- (ii) inventory of equipment owned by the department;

- (iii) federal highway dollars received;
 - (iv) cost of engineering services; and
 - (v) whether engineering services were performed by department staff or a private firm.
- (b) an examination of the budgets, costs, and functions of the Montana department of transportation over time; and
- (c) consideration of whether any functions of the department of transportation could be performed at the same quality for a lower cost by a private entity.

(2) The purpose of the audit provided for in this section is to accomplish the objectives established in 5-13-308.

(3) The cost of the audit in whole or in part must be paid by the department of transportation from the highway nonrestricted account provided for in 15-70-125.

(4) Following review by the legislative audit committee, the audit must be presented to the revenue and transportation interim committee provided for in 5-5-227 and must be posted on the website of the legislative audit division.

(5) By June 30, 2019, there must be a followup to the performance audit provided for in this section that includes a review of the progress of the department of transportation on recommendations resulting from the audit and information on:

(a) the number of full-time equivalent employees employed by the department of transportation;

(b) department costs per full-time equivalent employee;

(c) pay increases provided to employees in the previous year;

(d) department costs per road mile constructed; and

(e) the total cost of contracted labor.

(6) Following review by the legislative audit committee, the audit followup to the performance audit must be presented to the revenue and transportation interim committee provided for in 5-5-227.

Section 5. Department to maintain projects website. (1) The department of transportation shall maintain a website to provide information on projects funded from the bridge and road safety and accountability restricted account.

(2) The website must include:

(a) total revenue deposited in the account;

(b) total distributions from the account, including amounts distributed to:

(i) the department of transportation for the construction and maintenance of highways; and

(ii) local governments for the local government road construction and maintenance match program provided for in [section 3]; and

(c) a list of projects funded from the distributions listed in subsections (2)(b)(i) and (2)(b)(ii).

(3) The website must also include the total revenue distributed to the accounts provided for in 60-3-201 from the revenue deposited pursuant to 15-70-403(2)(b)(i).

(4) The website must be published within 1 year of [the effective date of this act] and must be updated quarterly.

(5) The list of projects provided for in subsection (2)(c) must be identified by city and county and must be searchable.

Section 6. Section 15-70-101, MCA, is amended to read:

“15-70-101. Disposition of funds. (1) ~~All taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be placed in a highway revenue account in the state special revenue fund to the credit of the~~

department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 17-2-124, be paid by the department of transportation from the state special revenue fund *highway restricted account provided for in [section 1]* to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of ~~\$16,766,000~~ *\$16,816,000* of the taxes collected under this chapter *and deposited in the highway restricted account in [section 1]* is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be ~~allocated~~ *distributed* each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c), *as follows*:

(a) The amount of ~~\$100,000~~ *\$150,000* must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of \$6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of \$10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 40% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys. The governing body of a town or third-class city may place all or a part of the 25% in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of the amounts provided in 7-5-2301 and 7-5-4302.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs.”

Section 7. Section 15-70-102, MCA, is amended to read:

“15-70-102. Allocation of funds – participation in railroad grade crossing protection. (1) The amount determined necessary may be allocated from the ~~state special revenue fund~~; highway revenue restricted account provided for in [section 1]; for each fiscal year for expenditures and commitments made for participation by the department of transportation with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary, or urban systems within the state. The department of transportation shall select those grade

crossings in the state that, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost of the improvements solely from this ~~fund~~ *allocation*.

(2) Signal protection provided under this section is limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of the signals must be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state. The *highway restricted* account may not be used for protection of grade crossings on the secondary system where the protection is considered necessary and when the cost is financed in part with federal-aid highway funds.

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to counties and cities under the provisions of 15-70-101 for participation in the installation in grade crossing protection within the county or city."

Section 8. Section 15-70-403, MCA, is amended to read:

"15-70-403. Gasoline and special fuel tax -- incidence -- rates. (1) The incidence of the fuel tax is on the distributor for the privilege of engaging in and carrying on business in this state. Each distributor shall pay to the department of transportation a tax in an amount equal to:

(a) ~~27 cents~~ for each gallon of gasoline distributed by the distributor within the state and upon which the gasoline tax has not been paid by any other distributor:

- (i) *31.5 cents in fiscal years 2018 and 2019;*
- (ii) *32 cents in fiscal years 2020 and 2021;*
- (iii) *32.5 cents in fiscal year 2022; and*
- (iv) *33 cents in fiscal year 2023 and thereafter;*

(b) ~~27 3/4 cents~~ for each gallon of special fuel distributed by the distributor within the state and on which the special fuel tax has not been paid by any other distributor:

- (i) *29.25 cents in fiscal years 2018 and 2019;*
- (ii) *29.45 cents in fiscal years 2020 and 2021;*
- (iii) *29.55 cents in fiscal year 2022; and*
- (iv) *29.75 cents in fiscal year 2023 and thereafter; and*

(c) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301.

(2) *The gasoline tax and special fuel tax must be deposited as follows:*

- (a) *to the highway restricted account provided for in [section 1]:*
 - (i) *the revenue from 27 cents of the tax provided for in subsection (1)(a) less the allocations provided for in 60-3-201(1)(a) through (1)(d); and*
 - (ii) *the revenue from 27 3/4 cents of the tax provided for in subsection (1)(b);*
- (b) *to the bridge and road safety and accountability restricted account provided for in [section 2]:*
 - (i) *the remaining revenue from the gasoline tax provided for in subsection (1)(a) less the allocations provided for in 60-3-201(1)(a) through (1)(d); and*
 - (ii) *the remaining revenue from the special fuel tax provided for in subsection (1)(b).*

(~~2~~)⁽³⁾ Gasoline or special fuel may not be included in the measure of the distributor's tax if it is sold for export unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

(~~3~~)⁽⁴⁾ Special fuel may not be included in the measure of the distributor's tax if it is dyed by injector at a refinery or terminal for off-highway use.

~~(4)~~(5) When no Montana fuel tax has been paid by a distributor or any other person, the department shall collect or cause to be collected from the owners or operators of motor vehicles operating on the public roads and highways of this state a tax equal to the tax rate provided for in subsection (1)(a) for gasoline and subsection (1)(b) for dyed or undyed special fuel. The tax must be paid for each gallon of gasoline or special fuel as defined in this part, or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test sold or used to produce motor power to operate motor vehicles on the public roads and highways of this state.

~~(5)~~(6) The tax may not be imposed on dyed special fuel delivered into the fuel supply tank of a vehicle that is equipped with a feed delivery box if:

- (a) the feed delivery box is permanently affixed to the vehicle;
- (b) the vehicle is used exclusively for the feeding of livestock; and
- (c) the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000 pounds.

~~(6)~~(7) All special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, and used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of a highway or street and its appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions, must be undyed fuel on which Montana fuel tax has been paid.

~~(7)~~(8) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection ~~(6)~~ (7) must be produced using fuel on which Montana fuel tax has been paid.”

Section 9. Section 15-70-404, MCA, is amended to read:

“15-70-404. Computation. (1) The tax imposed on the distributor under 15-70-403(1) may be rounded to the nearest whole dollar amount.

(2) The tax imposed under 15-70-403~~(4)~~(5) on owners or operators of the motor vehicles operating on the public roads and highways of this state must be computed, with respect to gasoline or special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser, by multiplying the corresponding tax rate per gallon as provided in 15-70-403(1) by the number of gallons of gasoline or special fuel consumed by the person in the operation of motor vehicles on the public roads and highways of this state.”

Section 10. Section 15-70-419, MCA, is amended to read:

“15-70-419. Improperly imported fuel -- seizure. (1) As used in this section, the following definitions apply:

(a) “Conveyance” means a tank car, vehicle, or vessel that is used to transport fuel.

(b) “Department” means the department of transportation.

~~(c)~~(b) “Peace officer” means an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-402.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes; ~~and fees, and penalties;~~ which the department shall deposit in a *the highway revenue restricted account in the state special revenue fund, as required in 15-70-101 provided for in [section 1] and the bridge and road safety and accountability restricted account provided for in [section 2] in the proportion provided by 15-70-403(2); and*

(ii) *the interest and penalties collected under this chapter, which the department shall deposit in the highway nonrestricted account provided for in 15-70-125; and*

(iii) ~~(ii)~~ the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (6); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 11. Section 15-70-456, MCA, is amended to read:

“15-70-456. Fees for temporary permits – duration of temporary permits. (1) Temporary special fuel permits issued under 15-70-455(1) cost \$30. The permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment costs \$30 per unit for the calendar year in which the fee is collected. The permit is not transferable. A unit is defined as:

- (a) one truck suitable for hauling commodities;
- (b) one harvesting machine; and
- (c) pickup trucks and any other accessory vehicles.

(3) The cost of a special fuel user’s agricultural product temporary trip permit for a person operating a vehicle in the movement of that person’s agricultural products, as provided in 15-70-455(3), is:

- (a) \$100 for a permit that is valid for 30 days from the date of issuance; or
- (b) \$300 for a permit that is valid for 3 months from the date of issuance.

(4) All fees collected must be remitted to the department or deposited directly in the ~~state special revenue fund~~ *highway restricted account provided for in [section 1]* for the department.”

Section 12. Section 17-5-903, MCA, is amended to read:

“17-5-903. Definitions. As used in this part, the following definitions apply:

(1) “Board” means the board of examiners created under 2-15-1007.

(2) “Bonds” means bonds, notes, or other evidences of indebtedness issued pursuant to this part as highway revenue bonds.

(3) “Cost”, as applied to any highway project, means any cost of construction or acquisition of any part of the highway project, including but not limited to the cost of supervising, inspecting, and constructing the highway project, interest during construction and for up to 6 months thereafter, and all costs and expenses incidental thereto; the costs of locating, surveying, mapping, resurfacing, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance; elimination of hazards of railroad grade crossings; acquisition of replacement housing sites; and acquisition, rehabilitation, relocation, and construction of replacement housing; and improvements necessary to directly facilitate and control traffic flow, including grade separation of intersections, widening of lanes, channelization of traffic, and traffic control systems.

(4) “Department” means the department of transportation provided for in Title 2, chapter 15, part 25.

(5) “Highway projects” means the construction, reconstruction, maintenance, and repair of federal-aid highways and state highways as such terms are defined in 60-1-103.

(6) “Highway revenues” means the revenues specified in Article VIII, section 6, of the Montana constitution *and [sections 1 and 2]* as revenues from gross vehicle weight fees and excise and license taxes (except general sales and use taxes, if any) on gasoline, fuel, and other energy sources used to propel vehicles on public highways and any other revenues, taxes, or receipts credited to the department in the state special revenue fund and the federal special revenue fund.

(7) “Outstanding bonds” means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount

sufficient to pay principal, interest, and redemption premium, if any, when due.”

Section 13. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; [section 3]; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers’ retirement system’s unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015,

the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)”

Section 14. Section 44-1-501, MCA, is amended to read:

“44-1-501. Payment of expenses. All expenses of the highway patrol ~~shall must~~ be paid out of the ~~transportation department’s department of transportation’s highway restricted account in the state special revenue fund provided for in [section 1].”~~

Section 15. Section 60-3-201, MCA, is amended to read:

“60-3-201. Distribution and use of proceeds of gasoline tax. (1) All money ~~Money~~ received in payment of the gasoline tax under 15-70-403, except those amounts paid out of the department’s suspense account for gasoline tax refund, must be ~~deposited as provided in 15-70-403(2) and~~ used and expended as provided in ~~[sections 1 and 2] and~~ this section. ~~The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder of the gasoline tax collected under 15-70-403 is allocated as follows:~~

- (a) 9/10 of 1% to the state park account;
- (b) 15/28 of 1% to a snowmobile account in the state special revenue fund;
- (c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund;
- (d) 1/25 of 1% to the aeronautics revenue fund of the department under the provisions of 67-1-301; and
- (e) the remaining amount:
 - ~~(i) for use by the department on the highways in this state selected and designated by the commission;~~
 - (ii) for collection of the fuel taxes; and
 - ~~(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state as provided for in [sections 1 and 2].~~

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23 of the United States Code and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the noxious weed management special revenue fund provided for in 80-7-816.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state.”

Section 16. Section 60-5-110, MCA, is amended to read:

“60-5-110. Commercial enterprise or structure prohibited – exceptions. (1) Except as provided in 60-5-505 and subsections (2) and (3) of this section, a commercial enterprise or structure may not be operated on the publicly owned or leased right-of-way of a controlled-access highway or controlled-access facility.

(2) The department may, under the terms and conditions that it considers appropriate, install or allow others to install electronic communication equipment or electronic informational kiosks on the right-of-way of any state highway, including a controlled-access facility. The department may charge a fee for the use of the equipment or kiosk. The fees must be deposited in the *highway* nonrestricted ~~highway state special revenue~~ account *provided for in 15-70-125* to be used for highway purposes.

(3) (a) The department may, under terms and conditions that it considers appropriate, contract with a blind vendor certified pursuant to Title 18, chapter 5, part 4, for the installation of vending machines on the right-of-way of any state highway, including a controlled-access facility.

(b) A blind vendor installing a vending machine pursuant to this subsection (3) is subject to the applicable provisions of Title 18, chapter 5, part 4.”

Section 17. Section 61-3-738, MCA, is amended to read:

“61-3-738. Deposit and distribution of fees on proportionally registered fleets. The light vehicle registration fees, fees in lieu of tax, and license fees collected under this part must be deposited with the state treasurer in the highway nonrestricted account *provided for in 15-70-125.*”

Section 18. Section 61-8-204, MCA, is amended to read:

“61-8-204. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of 61-8-713, a person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person must be paid a reward from the highway nonrestricted account ~~in the state special revenue fund~~ *provided for in 15-70-125* in the sum of \$100.”

Section 19. Section 61-8-907, MCA, is amended to read:

“61-8-907. Inspection – fees – decal. (1) The tow truck equipment of a commercial tow truck operator must have an annual safety inspection. A highway patrol officer, an employee of the department of transportation appointed as a peace officer in accordance with 61-12-201, or an inspector certified by the department shall conduct the inspection and require the commercial tow truck operator to provide proof of compliance with the provisions of 61-8-906.

(2) (a) Upon satisfactory completion of the inspection and verification of the insurance requirements, a decal showing the last inspection date and the expiration date of the insurance coverage must be affixed in a prominent place on the tow truck.

(b) If the commercial tow truck operator is participating in the law enforcement rotation system, the decal must also show the classification of the operator’s tow truck equipment.

(3) The department may establish inspection and decal fees that may not exceed the actual costs of the inspection and the decal. The fees for the inspection and decal must be deposited in the ~~state highway nonrestricted account in the state special revenue fund~~ *provided for in 15-70-125.*”

Section 20. Section 61-10-126, MCA, is amended to read:

“61-10-126. Deposit of fees. All fees collected under 61-10-101 through 61-10-104 and 61-10-106 through 61-10-125 must be forwarded to the department of transportation for deposit in the highway nonrestricted account ~~in the state special revenue fund~~ *provided for in 15-70-125.*”

Section 21. Section 61-10-225, MCA, is amended to read:

“61-10-225. Disposition of fees collected by county treasurer. The county treasurer shall transmit the fees provided for in 61-10-222 to the state, as provided in 15-1-504, for deposit to the credit of the department of transportation in the highway ~~revenue restricted~~ *restricted* account *provided for in [section 1]*. The remittance must be made on forms furnished to the county treasurer by the department of transportation.”

Section 22. Section 61-10-226, MCA, is amended to read:

“61-10-226. Deposit of state highway money. (1) Money received for the use of the department *of transportation* from the receipt or transfer of GVW license fees, as provided by law, or from other state sources must be deposited in the highway ~~revenue restricted~~ *restricted* account ~~in the state special revenue fund~~ *provided for in [section 1]* to the credit of the department.

(2) Money received from the federal government or other agencies must be deposited in a federal or state special revenue fund to the credit of the department.

(3) Money collected for the department as authorized by law must be credited to the appropriate fund by the state treasurer.

(4) Money received from the counties must be deposited in the appropriate account in the state special revenue fund to the credit of the department.”

Section 23. Section 75-11-301, MCA, is amended to read:

“75-11-301. Intent, findings, and purposes. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. It is the legislature’s intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(3) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(4) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(5) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution *or [section 1]*.

(6) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases.”

Section 24. Repealer. The following section of the Montana Code Annotated is repealed:

60-3-202. Funding highway system maintenance.

Section 25. Appropriation. There is appropriated to the department of transportation \$12.5 million in fiscal year 2018 and \$9.8 million in fiscal year 2019 from the state special revenue account provided for in [section 2]. The department shall fully expend all state special revenue appropriation authority provided in the 2019 biennium version of House Bill No. 2 for contractor payments within the Construction Program, including the state special revenue appropriation for Highway Construction Contractor Payments (Restricted), before using the appropriation provided for in this section.

Section 26. Implementation. The department of transportation shall implement the local match program provided for in [section 3] within existing resources.

Section 27. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply to [sections 1 through 3].

(2) [Sections 4 and 5] are intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [sections 4 and 5].

Section 28. Effective date. [This act] is effective July 1, 2017.

Approved May 3, 2017

CHAPTER NO. 268

[HB 511]

AN ACT REVISING INCOME TAX LAWS; REVISING THE MULTISTATE TAX COMPACT TO ADOPT REVISIONS RECOMMENDED BY THE MULTISTATE TAX COMMISSION, INCLUDING TO PROVIDE FOR MARKET SOURCING OF SALES; REVISING MONTANA'S CORPORATE INCOME TAX TO ADOPT CHANGES THAT GENERALLY CONFORM WITH REVISIONS TO ARTICLE IV OF THE MULTISTATE TAX COMPACT; REVISING LAWS RELATED TO THE CALCULATION OF MONTANA SOURCE INCOME FOR PARTNERSHIPS, S. CORPORATIONS, AND CERTAIN DISREGARDED ENTITIES; AMENDING SECTIONS 15-1-601, 15-30-3302, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, AND 15-31-312, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-601, MCA, is amended to read:

“15-1-601. Compact adopted – text. The Multistate Tax Compact is enacted into law and entered into with all jurisdictions legally joining in the compact, in the form substantially as set forth in this section. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

Article I. Purposes

The purposes of this compact are to:

- (1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;
- (2) promote uniformity or compatibility in significant components of tax systems;
- (3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;
- (4) avoid duplicative taxation.

Article II. Definitions

As used in this compact:

- (1) “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
- (2) “subdivision” means any government unit or special district of a state;

(3) “taxpayer” means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

(4) “income tax” means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;

(5) “capital stock tax” means a tax measured in any way by the capital of a corporation considered in its entirety;

(6) “gross receipts tax” means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;

(7) “sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;

(8) “use tax” means a nonrecurring tax, other than a sales tax, which:

(a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) is complementary to a sales tax;

(9) “tax” means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements Of Income Tax Laws

Taxpayer Option, State and Local Taxes

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer’s income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return whose

only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in 5 years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage

(3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division Of Income

(1) As used in this article, unless the context otherwise requires:

~~(a) "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;~~

(a) "apportionable income" means:

(i) all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) income arising from transactions and activity in the regular course of the taxpayer's trade or business, and

(B) income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

(ii) any income that would be allocable to this state under the Constitution of the United States but that is apportioned rather than allocated pursuant to the laws of this state;

(b) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company;

(e) "nonbusiness "nonapportionable income" means all income other than business apportionable income;

(f) "public utility" means any business entity:

(i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and

(ii) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

~~*(g) "sales" means all gross receipts of the taxpayer not allocated under subsections of this article;*~~

(g) "receipts" means all gross receipts of the taxpayer that are not allocated under paragraphs of this article and that are received from transactions

and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities shall be excluded;

(h) "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) "this state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion the taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.

(3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not *do so*.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute ~~nonbusiness~~ *nonapportionable* income, shall be allocated as provided in subsections (5) through (8) of this article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All *business apportionable* income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the *sales receipts* factor and the denominator of which is 3.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and:

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The *sales receipts* factor is a fraction, the numerator of which is the total *sales receipts* of the taxpayer in this state during the tax period and the denominator of which is the total *sales receipts* of the taxpayer everywhere during the tax period.

(16) *Sales Receipts from the sale* of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) *Sales, other than sales of tangible personal property, are in this state if:*

~~(a) the income-producing activity is performed in this state; or~~

~~(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.~~

(17) (a) *Receipts, other than receipts described in subsection (16), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:*

(i) *in the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;*

(ii) *in the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;*

(iii) *in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and*

(iv) *in the case of intangible property:*

(A) *that is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and*

(B) *that is sold, if and to the extent the property is used in this state, provided that:*

(I) *a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;*

(II) *receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subsection (17)(a)(iv)(A); and*

(III) *all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.*

(b) *If the state or states of assignment under subsection (17)(a) cannot be determined, the state or states of assignment shall be reasonably approximated.*

(c) *If the taxpayer is not taxable in a state to which a receipt is assigned under subsection (17)(a) or (17)(b), or if the state of assignment cannot be determined under subsection (17)(a) or reasonably approximated under subsection (17)(b), such receipt shall be excluded from the denominator of the receipts factor.*

(d) The tax administrator may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

(18) (a) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a)(i) separate accounting;

(b)(ii) the exclusion of any one or more of the factors;

(c)(iii) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d)(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) (i) If the allocation and apportionment provisions of this article do not fairly represent the extent of business activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity, the tax administrator may, in addition to the authority provided in section (18)(a), establish appropriate rules or regulations for determining alternative allocation and apportionment methods for such taxpayers.

(ii) A regulation adopted pursuant to this section shall be applied uniformly, except that with respect to any taxpayer to whom such regulation applies, the taxpayer may petition for, or the tax administrator may require, adjustment pursuant to subsection (18)(a).

(c) (i) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (18)(a) must prove by a preponderance of the evidence:

(A) that the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state; and

(B) that the alternative to such provisions is reasonable.

(ii) The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. Notwithstanding the previous sentence, if the tax administrator can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the tax administrator shall not bear the burden of proof in imposing a different method pursuant to (18)(a).

(d) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this article.

(e) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied.

Article V. Elements Of Sales And Use Tax Laws Tax Credit

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same

property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates -- Vendors May Rely

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission

Organization and Management

(1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate, but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subsection (1)(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual, regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a presiding officer, a vice presiding officer, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

(2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the presiding officer, vice presiding officer, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) study state and local tax systems and particular types of state and local taxes;

(b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

(4) (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in

its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (1)(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations And Forms

(1) Whenever any two or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings;

(b) afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits

(1) This article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may

enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident, provided that such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this article, "tax", in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private

persons who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

(8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless the member is required on account of the service to forego the regular compensation attaching to the member's public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be

final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board, the board's written statement of its reasons therefor, the record of the board's proceedings, and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards, together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force And Withdrawal

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect On Other Laws And Jurisdiction

Nothing in this compact shall be construed to:

(1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III, subsection (2), of this compact;

(2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI, subsection (3), may apply;

(3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body;

(4) supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction And Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Section 2. Section 15-30-3302, MCA, is amended to read:

“15-30-3302. Income or license tax involving pass-through entities – information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C. 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

(5) (a) Subject to the due date provision in 15-30-2604(1)(b), a partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) Subject to the due date provision in 15-30-2604(1)(b), an S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (5)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The penalty may not exceed \$2,500 for any one tax period. The department may waive the penalty imposed by this subsection (5)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due.

(6) *For purposes of this part:*

(a) *a partnership or S. corporation with business activity occurring both within and outside of this state shall calculate its Montana source income pursuant to the allocation and apportionment provisions contained in Title 15, chapter 31, part 3; and*

(b) *a disregarded entity that is not owned by an individual, estate, or trust and that has business activity occurring both within and outside of this state shall calculate its Montana source income pursuant to the allocation and apportionment provisions contained in Title 15, chapter 31, part 3."*

Section 3. Section 15-31-301, MCA, is amended to read:

"15-31-301. Corporations subject to allocation and apportionment.

(1) Any corporation having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this part.

(2) A corporation engaged in a unitary business within and without Montana must apportion its ~~business~~ *business apportionable* income as provided for under 15-31-305. A business is unitary when the operation of the business within the state is dependent upon or contributory to the operation of the business outside the state or if the units of the business within and without the state are closely allied and not capable of separate maintenance as independent businesses.

(3) A corporation not engaged in a unitary business must allocate its ~~business~~ *business apportionable* income by means of separate accounting methods,

provided its books and records are so kept that the income and expenses attributable to business operations within the state can be properly segregated from total income and expense. If the corporation's books and records do not permit such proper segregation, its *business apportionable* income must be apportioned according to the provisions of 15-31-305."

Section 4. Section 15-31-302, MCA, is amended to read:

"15-31-302. Definitions. (1) ~~"Business income"~~ means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations:

(1) *"Apportionable income"* means:

(a) *all income that is apportionable under the constitution of the United States and is not allocated under the laws of this state, including:*

(i) *income arising from transactions and activity in the regular course of the taxpayer's trade or business; and*

(ii) *income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and*

(b) *any income that would be allocable to this state under the constitution of the United States but that is apportioned rather than allocated pursuant to the laws of this state.*

(2) *"Commercial domicile"* means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) *"Compensation"* means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(4) ~~"Nonbusiness"~~ *"Nonapportionable income"* means all income other than *business apportionable* income.

(5) ~~"Sales"~~ *"Receipts"* means all gross receipts of the taxpayer not allocated under 15-31-304.

(6) *"State"* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof."

Section 5. Section 15-31-303, MCA, is amended to read:

"15-31-303. When taxable in another state. For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:

(1) ~~by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or~~

(2) ~~that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, the state does or does not subject the taxpayer to a net income tax as provided in Article IV, subsection (3), of 15-1-601."~~

Section 6. Section 15-31-304, MCA, is amended to read:

"15-31-304. Allocation of nonbusiness nonapportionable income.

(1) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute *nonbusiness nonapportionable* income, shall *must* be allocated as provided in subsections (2) through (5) of this section:

(2) (a) Net rents and royalties from real property located in this state are allocable to this state:

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(3) (a) Capital gains and losses from sales of real property located in this state are allocable to this state:

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state:

(5) (a) Patent and copyright royalties are allocable to this state if and to the extent that:

(i) the patent or copyright is utilized by the payer in this state; or

(ii) the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located *Article IV, subsections (4) through (8), of 15-1-601.*"

Section 7. Section 15-31-305, MCA, is amended to read:

"15-31-305. Apportionment of business apportionable income. All business *apportionable* income shall *must* be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is ~~3~~ *as provided in Article IV, subsection (9), of 15-1-601.*"

Section 8. Section 15-31-306, MCA, is amended to read:

"15-31-306. Definition of property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal

property owned or rented and used in the production of business income during the tax period *provided for in Article IV, subsection (10), of 15-1-601.*"

Section 9. Section 15-31-307, MCA, is amended to read:

"15-31-307. Values used for property factor. (1) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(2) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property as *provided in Article IV, subsections (11) and (12), of 15-1-601.*"

Section 10. Section 15-31-308, MCA, is amended to read:

"15-31-308. Definition of payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income *provided for in Article IV, subsection (13), of 15-1-601.*"

Section 11. Section 15-31-309, MCA, is amended to read:

"15-31-309. Payroll factor for compensation in this state. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (3) some of the service is performed in the state and:
 - (a) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or
 - (b) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state *as provided in Article IV, subsection (14), of 15-1-601.*"

Section 12. Section 15-31-310, MCA, is amended to read:

"15-31-310. Definition of sales receipts factor. The sales receipts factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period *provided for in Article IV, subsection (15), of 15-1-601.*"

Section 13. Section 15-31-311, MCA, is amended to read:

"15-31-311. Sales Receipts factor for sales receipts in this state. (1) Sales Receipts from the sale of tangible personal property are in this state if:

- (a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:
 - (i) the purchaser is the United States government; or
 - (ii) the taxpayer is not taxable in the state of the purchaser *as provided for in Article IV, subsection (16), of 15-1-601.*

(2) Sales Receipts, other than sales of tangible personal property receipts *provided for in subsection (1),* are in this state if:

~~(a) the income-producing activity is performed in this state; or~~

~~(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance as provided for in Article IV, subsection (17), of 15-1-601.”~~

Section 14. Section 15-31-312, MCA, is amended to read:

“15-31-312. Apportionment formula – unitary business provisions.

(1) If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer’s business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer’s business activity, if reasonable:

~~(1)(a) separate accounting, provided the taxpayer’s activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this part, a “unitary business” is one in which the business conducted within the state is dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses;~~

~~(2) the exclusions of any one or more of the factors;~~

~~(3) the inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this state; or~~

~~(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer’s income; or~~

~~(b) the application of the provisions of Article IV, subsections (18)(a)(ii) through (18)(a)(iv), of 15-1-601.~~

~~(2) If the allocation and apportionment provisions of this part do not fairly represent the extent of business activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity, Article IV, subsection (18)(b), of 15-1-601 applies.”~~

Section 15. Effective date. [This act] is effective January 1, 2018.

Section 16. Applicability. [This act] applies to tax years beginning after December 31, 2017.

Approved May 3, 2017

CHAPTER NO. 269

[HB 516]

AN ACT ALLOWING FOR A CIVIL ACTION TO COLLECT DELINQUENT PROPERTY TAXES; SPECIFYING WHO CAN BRING THE ACTION; ALLOWING FOR THE AWARDED OF ATTORNEY FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Civil action to collect delinquent taxes. (1) A taxing jurisdiction may bring a civil action to collect the entire balance due of delinquent property taxes when the amount equals \$250,000 or more owed to all taxing jurisdictions.

(2) A civil action may be brought as provided in this section for property to which a tax lien was attached pursuant to 15-17-212 and for which no assignment was made pursuant to 15-17-323 within 3 years of the attachment of the tax lien.

(3) The taxing jurisdiction shall bring the civil action in the district court of the county in which the property is located.

(4) Reasonable attorney fees must be awarded to the prevailing party in an action brought pursuant to this section.

(5) If the taxing jurisdiction prevails in the civil action provided for in this section, the taxpayer shall pay interest and penalties as provided in 15-16-101(1)(b). The interest and penalties must be distributed to the funds to which the taxes are distributed in the same proportion as the taxes are distributed.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 16, part 5, and the provisions of Title 15, chapter 16, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to property taxes that are delinquent on or after [the effective date of this act].

Approved May 3, 2017

CHAPTER NO. 270

[HB 517]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE A STRATEGIC PLAN TO REDUCE THE INCIDENCE OF CHILD ABUSE AND NEGLECT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Strategic plan for child abuse and neglect prevention – report to legislature. (1) (a) By August 15, 2018, the department shall develop a strategic plan that sets out measurable goals and strategies for reducing child abuse and neglect in Montana over a 5-year period. The plan must address ways to:

- (i) increase family stability;
- (ii) enhance child development for all families; and
- (iii) mitigate the factors known to lead to child abuse and neglect.

(b) The plan must review factors and propose strategies specific to Montana's urban and rural areas, as well as the state's Indian communities and reservations.

(2) The strategic plan must:

(a) outline the degree to which child abuse and neglect is occurring in Montana and the projections for the occurrence of child abuse and neglect in future years;

(b) discuss the effects that child abuse and neglect have on children, families, and society as a whole, including the effects on the physical, psychological, cognitive, and behavioral development of children;

(c) examine the risk factors that lead to child abuse and neglect and the protective factors that reduce the potential for child abuse and neglect to occur, using the social-ecological model that takes into account individual, family, community, and societal factors, including factors specific to Indian communities and reservations;

(d) review research related to risk and protective factors to evaluate the effectiveness of various prevention efforts and identify the characteristics of successful prevention responses;

(e) inventory the prevention responses currently being used in Montana at the state and local levels; and

(f) propose additional prevention strategies.

(3) The department shall, at a minimum, include the following entities in development of the strategic plan:

(a) the interagency coordinating council for state prevention programs provided for in 2-15-225;

(b) the Montana children's trust fund board provided for in 2-15-2214;

(c) the state advisory council for the child and family services division of the department;

(d) former members of the protect Montana kids commission established by the governor by executive order on September 21, 2015;

(e) representatives of Montana's tribal communities; and

(f) representatives of other state and local agencies and organizations that work to reduce or prevent child abuse and neglect, including juvenile courts and health, education, social services, and law enforcement agencies.

(4) The department shall provide a copy of the strategic plan to the children, families, health, and human services interim committee and the legislative finance committee.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

Approved May 3, 2017

CHAPTER NO. 271

[HB 541]

AN ACT REVISING THE DEFINITION OF SMALL BREWERY; INCREASING THE NUMBER OF BARRELS A BREWERY MAY PRODUCE TO QUALIFY AS A SMALL BREWERY; REQUIRING THAT THE PRODUCTION OF AFFILIATED MANUFACTURERS AND BEER PURCHASED FROM OTHER BREWERIES MUST BE USED IN DETERMINING THE AMOUNT OF PRODUCTION; REVISING TAXES IMPOSED ON PRODUCTION BY BREWERS; AND AMENDING SECTIONS 16-1-406, 16-3-213, AND 16-4-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-406, MCA, is amended to read:

“16-1-406. Taxes on beer. (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than ~~20,000~~ 10,000 barrels of beer a year is taxed on the following increments of production:

(i) up to 5,000 barrels, \$1.30;

(ii) 5,001 barrels to 10,000 barrels, \$2.30; and

(iii) ~~10,001 barrels to 20,000 barrels, \$3.30.~~

(b) The tax on beer sold for a brewer who produces over ~~20,000~~ 10,000 barrels is \$4.30.

(2) The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to subsection (1), an amount equal to:

(a) 23.26% must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency; and

(b) the balance must be deposited in the state general fund.”

Section 2. Section 16-3-213, MCA, is amended to read:

“16-3-213. Brewers or beer importers not to retail beer – small brewery exceptions. (1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

(2) (a) For the purposes of this section, a “small brewery” is a brewery that has an annual nationwide production of not less than 100 barrels or more than ~~10,000~~ 60,000 barrels, including:

(i) *the production of all affiliated manufacturers; and*

(ii) *beer purchased from any other beer producer to be sold by the brewery.*

(b) A small brewery may, at one location for each brewery license and at no more than three locations including affiliated manufacturers, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day. *No more than 2,000 barrels may be provided annually for on premises consumption including all affiliated manufacturers.*

(3) *For the purposes of this section, “affiliated manufacturers” means a manufacturer of beer:*

(a) *that one or more members of the manufacturing entity have more than a majority share interest in or that controls directly or indirectly another beer manufacturing entity;*

(b) *for which the business operations conducted between or among entities are interrelated or interdependent to the extent that the net income of one entity cannot reasonably be determined without reference to operations of the other entity; or*

(c) *of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or logos are identical or nearly identical.”*

Section 3. Section 16-4-501, MCA, is amended to read:

“16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;

(ii) for each storage depot, \$400;

(b) (i) each beer wholesaler, \$400; each winery, \$200; each table wine distributor, \$400;

(ii) for each subwarehouse, \$400;

(c) each beer retailer, \$200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans’ organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.

(6) The annual renewal fee for:

(a) a brewer producing ~~20,000~~ 10,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

(b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

(7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for a license issued. The one-time license fee of \$20,000

may not apply to any transfer or renewal of a license issued prior to July 1, 1974. However, all licenses are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

(9) The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.

(10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.

(11) The annual fee for a distillery is \$600.

(12) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Approved May 3, 2017

CHAPTER NO. 272

[HB 554]

AN ACT CLARIFYING ELIGIBILITY FOR PROPERTY TAX ASSISTANCE PROGRAMS; AMENDING SECTION 15-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-301, MCA, is amended to read:

"15-6-301. Definitions. As used in this part, the following definitions apply:

(1) "Annual verification" means the use of a process to:

(a) verify an applicant's income;

(b) approve, renew, or deny benefits for the current year based upon the applicant's eligibility; and

(c) terminate participation based upon death or loss of status as a qualified veteran or veteran's spouse.

(2) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce.

(3) "PCE inflation factor" for a tax year means the PCE for April of the prior tax year before the tax year divided by the PCE for April 2015.

(4) (a) "Primary residence" is, subject to the provisions of subsection (4)(b), a dwelling:

(i) in which a taxpayer can demonstrate the taxpayer lived for at least 7 months of the year for which benefits are claimed;

(ii) that is the only residence for which property tax assistance is claimed; and

(iii) determined using the indicators provided for in the rules authorized by 15-6-302(2).

(b) A primary residence may include more than one dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year and another dwelling for less than 7 months of the same tax year, but lives taxpayer's combined residence in the dwellings for more than is at least 7 months of the tax year.

(5) "Qualified veteran" means a veteran:

(a) who was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; and

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs.

(6) "Qualifying income" means:

(a) the federal adjusted gross income excluding capital and income losses of an applicant and the applicant's spouse as calculated on the Montana income tax return for the prior year;

(b) for assistance under ~~15-6-305~~ [15-6-311] 15-6-311, the federal adjusted gross income excluding capital and income losses of an applicant as calculated on the Montana income tax return for the prior tax year; or

(c) for an applicant who is not required to file a Montana income tax return, the income determined using available income information.

(7) "Qualifying property" means a primary residence that a qualified applicant owned and occupied for at least 7 months during the tax year.

~~(7)~~(8) "Residential real property" means the land and improvements of a taxpayer's primary residence."

Section 2. Time period for property tax assistance. (1) A person who qualifies for assistance under 15-6-305 or 15-6-311 is entitled to assistance as provided for in this section.

(2) The property tax assistance is provided for the full tax year:

(a) in the first year in which the applicant qualifies for assistance if the applicant resides in the qualifying property for the remainder of the tax year;

(b) if the applicant resides in the qualifying property for the full tax year;

(c) for qualifying property owned by an applicant at the time the tax roll is provided to the county treasurer for billing if 15-6-301(4)(b) applies.

(3) If an applicant who qualifies for assistance sells the qualifying property and does not purchase a new residence during the tax year, the assistance is provided for the number of days the taxpayer owned the qualifying property during the tax year based on the date of sale.

(4) (a) Except as provided in subsection (4)(b), a person who purchases a qualifying property is not entitled to assistance for the partial tax year during which the person owns the property. The property must be assessed at the full tax rate for the portion of the year the person owns the property based on the date of sale.

(b) If the sale date is after the county treasurer sends the tax notice provided for in 15-16-101(2), the tax notice may not be revised based on the change in ownership.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 6, part 3, and the provisions of Title 15, chapter 6, part 3, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2017

CHAPTER NO. 273

[HB 564]

AN ACT REVISING SPORTS POOLS TO ALLOW A RANGE OF BUY-IN OPTIONS; AMENDING SECTION 23-5-503, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-503, MCA, is amended to read:

“23-5-503. Rules. (1) (a) The card or other device used for recording the sports pool or sports tab game must clearly indicate in advance of the sale of any chances:

- (i) the number of chances to be sold in that specific pool;;
- (ii) the name of the event or series of events;;
- (iii) the consideration to be paid for each chance; and
- (iv) the total amount or percentage to be paid to the winners.

(b) The sports tabs must be purchased from a sports tab game seller licensed under 23-5-513.

(2) (a) Each sports tab ~~or chance to participate in a sports pool~~ must be sold for the same amount, which may not exceed \$25. ~~A chance to participate in a sports pool may be sold in any combination so long as each chance is for the same amount and not greater than \$100 and the total amount paid to all winners of any individual sports pool or does not exceed the value of \$2,500. The total amount paid to all winners of any individual sports tab game may not exceed the value of \$2,500.~~

(b) Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in subsection (3)(b), the winners of any sports pool must receive a 100% payout of the value of the sports pool. The winner of a sports tab game must receive at least 90% of the total cost of the 100 sports tabs. The operator of the sports tab game may retain the remaining money for administration and other expenses.

(b) A nonprofit organization that maintains records and opens the records to inspection upon reasonable demand to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool or a sports tab game.

(4) A person or nonprofit organization conducting a sports pool or a sports tab game may purchase chances or sports tabs to participate in the sports pool or sports tab game but may not:

(a) retain any portion of the amount wagered in the sports pool or sports tab game, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool or sports tab game; or

(c) use the sports pool or sports tab game in any manner to establish odds or handicaps or to allow betting or booking against the person or nonprofit organization conducting the pool or game.”

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved May 3, 2017

CHAPTER NO. 274

[HB 644]

AN ACT REVISING LAWS RELATING TO WILDFIRES AND UNMANNED AERIAL VEHICLE SYSTEMS; PROHIBITING INTERFERENCE WITH WILDFIRE SUPPRESSION EFFORTS INCLUDING BY THE USE OF UNMANNED AERIAL VEHICLE SYSTEMS; RESTRICTING GOVERNMENTAL ENTITIES WITH SELF-GOVERNING POWERS FROM ENACTING ORDINANCES GOVERNING THE PRIVATE USE OF AN UNMANNED AERIAL VEHICLE IN RELATION TO A WILDFIRE; PROVIDING PENALTIES; AND AMENDING SECTION 7-1-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Obstruction of aerial wildfire suppression effort – penalty – exceptions. (1) A person may not obstruct, impede, prevent, or otherwise interfere with a lawful aerial wildfire suppression response by a state or local government effort by any means, including by the use of an unmanned aerial vehicle system.

(2) A person who violates subsection (1) is liable for a civil penalty to the state or local government for an amount equivalent to the reasonable costs of obstructing, impeding, preventing, or interfering with an aerial wildfire suppression response effort. The penalty may not exceed the actual flight costs of the aerial wildfire suppression response effort that was obstructed, impeded, prevented, or interfered with.

(3) Subsection (1) does not apply to the operation of an unmanned aerial vehicle system conducted by a unit or agency of the United States government or of a state, tribal, or local government, including any individual conducting an operation pursuant to a contract or other agreement entered into with the unit or agency, for the purpose of protecting the public safety and welfare, including firefighting, law enforcement, or emergency response.

(4) As used in this section, the following definitions apply:

(a) “Unmanned aerial vehicle” means an aircraft that is:

(i) capable of sustaining flight; and

(ii) operated with no possible direct human intervention from on or within the aircraft.

(b) “Unmanned aerial vehicle system” means the entire system used to operate an unmanned aerial vehicle, including:

(i) the unmanned aerial vehicle;

(ii) communications equipment;

(iii) navigation equipment;

(iv) controllers;

(v) support equipment; and

(vi) autopilot functionality.

(c) “Wildfire” means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels.

(d) “Wildfire suppression” means an effort to contain, extinguish, or suppress a wildfire.

Section 2. Section 7-1-111, MCA, is amended to read:

“7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(17) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to

accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(19) *any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire.*"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [section 1].

Approved May 3, 2017

CHAPTER NO. 275

[SB 21]

AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 65TH LEGISLATURE AND PREVIOUS LEGISLATURES; AMENDING SECTIONS 1-5-603, 1-5-610, 1-5-622, 7-6-2527, 15-6-301, 15-6-302, 15-6-311, 15-7-102, 15-70-412, 20-7-102, 20-7-1404, 20-9-306, 32-9-169, 33-2-1112, 45-8-340, 46-23-509, 61-3-332, 61-8-607, 69-8-402, 69-8-412, 77-1-125, 80-7-1007, AND 85-7-1411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-603, MCA, is amended to read:

"1-5-603. Requirements for certain notarial acts – personal appearance – identification methods. (1) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(2) A notarial officer who takes a verification on oath or affirmation of a statement shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(3) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and signing the record has the identity claimed.

(4) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or the item.

(5) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in ~~30-3-510(1)(b)~~ 30-3-510(2).

(6) A notarial officer who administers an oath in conjunction with taking a deposition and certifies or attests to the transcript of the deposition shall certify to the matters set forth by this part, other laws, or the court of jurisdiction.

(7) (a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear physically before the notarial officer or by real-time, two-way video and audio communication technology as authorized in 1-5-615 and 1-5-628.

(b) Except as provided in subsection (7)(c), subsection (7)(a) modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq.

(c) Subsection (7)(a) does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

(8) A notarial officer has personal knowledge of the identity of an individual appearing before the notarial officer if the individual is personally known to the notarial officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(9) A notarial officer has satisfactory evidence of the identity of an individual appearing before the notarial officer if the notarial officer can identify the individual:

(a) by means of:

(i) a passport, driver’s license, or government-issued nondriver identification card, which may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act; or

(ii) another form of government identification issued to an individual, which:

(A) may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act;

(B) must contain the signature or a photograph of the individual; and

(C) must be satisfactory to the notarial officer; or

(b) by verification on oath or affirmation of a credible witness personally appearing before the notarial officer and known to the notarial officer or whom the notarial officer can identify on the basis of a passport, driver’s license, or government-issued nondriver identification card, which is current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act.

(10) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the notarial officer of the identity of the individual.”

Section 2. Section 1-5-610, MCA, is amended to read:

“1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-609(1) and (2):

(1) For an acknowledgment in an individual capacity:

State of.....

County of.....

This record was acknowledged before me on (date) by (name(s) of individual(s)

.....
(Signature of notarial officer)

(Official Stamp)

.....
Title of officer (if not shown in stamp)

(2) For an acknowledgment in a representative capacity:

State of.....

County of.....

This record was acknowledged before me on (date) by (name(s) of individual(s)) as (type of authority) of or for (name of party on behalf of whom the record was executed).

(Signature of notarial officer)

(Official stamp)

Title of officer (if not shown in stamp)

(3) For a verification on oath or affirmation:

State of.....

County of.....

This record was signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s))

(Signature of notarial officer)

(Official stamp)

(Name - typed, stamped, or printed)

Title of officer (if not shown in stamp)

(4) For witnessing or attesting a signature:

State of.....

County of.....

The record was signed before me on (date) by (name(s) of individual(s))

(Signature of notarial officer)

(Official stamp)

Title of officer (if not shown in stamp)

(5) For certifying a copy of a record:

State of.....

County of.....

I certify that this is a true and correct copy of (identification of record) in the possession of, or issued by, (custodian or issuer) and made by me on (date)

(Signature of notarial officer)

(Official stamp)

Title of officer (if not shown in stamp)

(6) For certifying a transcript or of a deposition or affidavit:

State of.....

County of.....

I hereby certify and state the following:

that I have sworn in the deponent;

that the deposition was taken before me and this is a true and accurate transcription of the testimony;

that I am not a relative, agent, or employee of the deponent or the attorney or counsel of any of the parties;

that I am not an interested party to the matter.

A review of this transcript (was / was not) requested.

Dated this day of, 20...

(Signature of notarial officer)

(Official stamp)

.....
Title of officer (if not shown in stamp).”

Section 3. Section 1-5-622, MCA, is amended to read:

“1-5-622. Authority to refuse to perform notarial act. (1) A notarial officer may refuse to perform a notarial act if the notarial officer is not satisfied that:

(a) the individual executing the record is competent or has the capacity to execute the record; or

(b) the individual executing the record is ~~not~~ signing knowingly or voluntarily.

(2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a law other than as provided in this part.”

Section 4. Section 7-6-2527, MCA, is amended to read:

“7-6-2527. Taxation – public and governmental purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

- (1) district court purposes as provided in 7-6-2511;
- (2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;
- (3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;
- (4) multijurisdictional service purposes as provided in 7-11-1022;
- (5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;
- (6) support for a port authority as provided in 7-14-1132;
- (7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;
- (8) recreational, educational, and other activities of the elderly as provided in 7-16-101;
- (9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102 and 7-16-2109;
- (10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;
- (11) support for a museum, facility for the arts and the humanities, collection of exhibits, or a museum district created under provisions of Title 7, chapter 11, part 10, or former Title 7, chapter 16, part 22;
- (12) extension work in agriculture and home economics as provided in 7-21-3203;
- (13) weed control and management purposes as provided in 7-22-2142;
- (14) insect control programs as provided in 7-22-2306;
- (15) fire control as provided in 7-33-2209;
- (16) ambulance service as provided in 7-34-102;
- (17) public health purposes as provided in 50-2-111 ~~and 50-2-114~~;
- (18) public assistance purposes as provided in 53-3-115;
- (19) indigent assistance purposes as provided in 53-3-116;
- (20) developmental disabilities facilities as provided in 53-20-208;
- (21) mental health services as provided in 53-21-1010;
- (22) airport purposes as provided in 67-10-402 and 67-11-302;
- (23) purebred livestock shows and sales as provided in 81-8-504;
- (24) economic development purposes as provided in 90-5-112;

(25) prevention programs, including programs that reduce substance abuse; and

(26) forest or grassland hazardous fuels reduction projects in areas near homes and communities where wildland fire is a threat.”

Section 5. Section 15-6-301, MCA, is amended to read:

“15-6-301. Definitions. As used in this part, the following definitions apply:

(1) “Annual verification” means the use of a process to:

(a) verify an applicant’s income;

(b) approve, renew, or deny benefits for the current year based upon the applicant’s eligibility; and

(c) terminate participation based upon death or loss of status as a qualified veteran or veteran’s spouse.

(2) “PCE” means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce.

(3) “PCE inflation factor” for a tax year means the PCE for April of the prior tax year before the tax year divided by the PCE for April 2015.

(4) (a) “Primary residence” is, subject to the provisions of subsection (4)(b), a dwelling:

(i) in which a taxpayer can demonstrate the taxpayer lived for at least 7 months of the year for which benefits are claimed;

(ii) that is the only residence for which property tax assistance is claimed; and

(iii) determined using the indicators provided for in the rules authorized by 15-6-302(2).

(b) A primary residence may include more than one dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year and another dwelling for less than 7 months of the same tax year, but lives in the dwellings for more than 7 months of the tax year.

(5) “Qualified veteran” means a veteran:

(a) who was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; and

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs.

(6) “Qualifying income” means:

(a) the federal adjusted gross income excluding capital and income losses of an applicant and the applicant’s spouse as calculated on the Montana income tax return for the prior year;

(b) for assistance under ~~15-6-305~~ [15-6-311], the federal adjusted gross income excluding capital and income losses of an applicant as calculated on the Montana income tax return for the prior tax year; or

(c) for an applicant who is not required to file a Montana income tax return, the income determined using available income information.

(7) “Residential real property” means the land and improvements of a taxpayer’s primary residence.”

Section 6. Section 15-6-302, MCA, is amended to read:

“15-6-302. Property tax assistance – rulemaking. (1) The requirements of this section must be met for a taxpayer to qualify for property tax assistance under 15-6-305 or 15-6-311.

(2) For the property tax assistance programs provided for in 15-6-305 and 15-6-311, the residential real property must be owned by the applicant or under contract for deed and be the primary residence as defined in 15-6-301. The department shall make rules specifying the indicators used for determining whether a residence is a primary residence for purposes of property tax assistance programs.

(3) An applicant's qualifying income, as defined in 15-6-301, may not exceed the threshold established in 15-6-305 or 15-6-311 or in rules established pursuant to those sections.

(4) (a) A claim for assistance must be submitted on a form prescribed by the department.

(b) The form must contain:

(i) the qualifying income of the applicant and the applicant's spouse;

(ii) an affirmation that the applicant owns and maintains the land and improvements as the primary residence as defined in 15-6-301;

(iii) the social security number of the applicant and of the applicant's spouse; and

(iv) any other information required by the department that is relevant to the applicant's eligibility.

(5) (a) An application must be filed by April 15 of the year for which assistance is first claimed.

(b) Once assistance is approved, the applicant remains eligible for property tax assistance in subsequent years through the annual verification process defined in 15-6-301 without the need to reapply.

(c) Applicants and participants in the property tax assistance program provided for in [former] 15-6-134(1)(c) and the disabled or deceased veterans program provided for in [former] 15-6-211 as those sections existed on December 31, 2014, must be included in the annual verification process and are not required to submit a new application.

(d) A taxpayer shall inform the department of any change in eligibility occurring from one year to the next.

(6) The department may verify an applicant's and an applicant's spouse's social security number and benefits with the social security administration and the U.S. department of veterans affairs.

(7) The department must annually verify an applicant's eligibility, including the applicant's and spouse's income, and approve, renew, or deny benefits for the current year based upon the findings.

(8) (a) When providing information for property tax assistance under 15-6-305 or 15-6-311, applicants are subject to the false swearing penalties established in 45-7-202.

(b) The department may investigate the information provided in an application and an applicant's continued eligibility.

(c) The department may request applicant verification of the primary residence.

(9) The department may address unusual circumstances of ownership and income that arise in administering taxpayer assistance programs provided for in 15-6-305 and 15-6-311.

(10) A temporary stay in a nursing home or similar facility does not change a taxpayer's primary residence for the purposes of taxpayer assistance programs provided for in 15-6-305 and 15-6-311.

(11) The department shall award property assistance under the property tax assistance program that provides the greatest benefit to the taxpayer by reviewing applications and eligibility requirements, and notify the applicant of the department's decision."

Section 7. Section 15-6-311, MCA, is amended to read:

“15-6-311. Disabled veteran program. (1) The residential real property of a qualified veteran or a qualified veteran’s spouse is eligible to receive a tax rate reduction as provided in ~~15-6-305~~[15-6-302] and this section.

(2) Property qualifying under subsection (1) and owned by a qualified veteran is taxed at the rate provided in 15-6-134 multiplied by a percentage figure based on the applicant’s qualifying income determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$37,404	\$0 - \$44,885	0%
\$37,405 - \$41,145	\$44,886 - \$48,626	20%
\$41,146 - \$44,885	\$48,627 - \$52,366	30%
\$44,886 - \$48,626	\$52,367 - \$56,107	50%

(3) For a surviving spouse who owns property qualifying under subsection (4), the property is taxed at the rate established by 15-6-134 multiplied by a percentage figure based on the spouse’s qualifying income determined from the following table:

Income Surviving Spouse	Percentage Multiplier
\$0 - \$31,170	0%
\$31,171 - \$34,911	20%
\$34,912 - \$38,651	30%
\$38,652 - \$42,392	50%

(4) The property tax exemption under this section remains in effect as long as the qualifying income requirements are met and the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran’s spouse and the spouse:

- (a) is the owner and occupant of the house;
- (b) is unmarried; and

(c) has obtained from the U.S. department of veterans affairs a letter indicating that the veteran was rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

(5) The qualifying income levels contained in subsections (2) and (3) must be adjusted annually by using the PCE inflation factor defined in 15-6-301, rounded to the nearest whole dollar amount.”

Section 8. Section 15-7-102, MCA, is amended to read:

“15-7-102. Notice of classification, market value, and taxable value to owners -- appeals. (1) (a) Except as provided in 15-7-138, the department shall mail or provide electronically to each owner or purchaser under contract for deed a notice that includes the land classification, market value, and taxable value of the land and improvements owned or being purchased. A notice must be mailed to the owner only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;

- (ii) change in classification;
- (iii) change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) The notice must include the following for the taxpayer's informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance programs provided for in Title 15, chapter 6, part 3, and the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(c) When the department uses an appraisal method that values land and improvements as a unit, including the sales comparison approach for residential condominiums or the income approach for commercial property, the notice must contain a combined appraised value of land and improvements.

(d) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail or provide electronically the notice in written or electronic form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail or provide electronically the notice to a new owner or purchaser under contract for deed unless the department has received the realty transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed or provided electronically. The department shall notify the county tax appeal board of the date of the mailing or the date when the taxpayer is informed the information is available electronically.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection on written or electronic forms provided by the department for that purpose.

(i) For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days from the date on the notice.

(ii) For class three property described in 15-6-133 and class four property described in 15-6-134, the objection may be made only once each valuation cycle. An objection must be made within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for both years of the 2-year appraisal cycle. Any reduction in value resulting from an objection made more than 30 days from the date of the assessment notice will be applicable only for the second year of the 2-year reappraisal cycle.

(iii) For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made

within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. Any reduction in value resulting from an objection made more than 30 days after the date of the assessment notice applies only for the subsequent remaining years of the 6-year reappraisal cycle.

(b) If the objection relates to residential or commercial property and the objector agrees to the confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within 8 weeks of submission of the objection, the following information:

(i) the methodology and sources of data used by the department in the valuation of the property; and

(ii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) At the request of the objector, and only if the objector signs a written or electronic confidentiality agreement, the department shall provide in written or electronic form:

(i) comparable sales data used by the department to value the property; and

(ii) sales data used by the department to value residential property in the property taxpayer's market model area.

(d) For properties valued using the income approach as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.

(e) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. ~~The county tax appeal board~~ [department] shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the department does not use the appraisal provided by the taxpayer in conducting the appeal, the department must provide to the taxpayer the reason for not using the appraisal. The department shall give reasonable notice to the taxpayer of the time and place of the review.

(f) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination by mail or electronically. The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property or data available for the property that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection on written or electronic forms provided by the department; and

(b) the department has provided to the objector by mail or electronically its stated reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 9. Section 15-70-412, MCA, is amended to read:

"15-70-412. Invoice of distributors and aviation fuel dealers. Each distributor and aviation *fuel* dealer in this state shall at the time of delivery, except when authorized by the department of transportation, issue to the purchaser an invoice that states the number of gallons of gasoline or special fuel covered by the invoice and any other information the department may require."

Section 10. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(15)(c)(ii)~~ *20-9-306(16)(c)(ii)*."

Section 11. Section 20-7-1404, MCA, is amended to read:

"20-7-1404. (Temporary) Indian language immersion programs – funding – flexibility. (1) School districts are encouraged to create Indian language immersion programs and in doing so:

(a) collaborate with other school districts, the Montana digital academy, tribal governments, and tribal colleges;

(b) utilize materials produced in the Montana Indian language preservation pilot program pursuant to section 1, Chapter 410, Laws of 2013;

(c) utilize American Indian language and culture specialists as teachers of language and culture; and

(d) look to existing native language schools in Montana and around the world for guidance and best practices.

(2) In acknowledgment of Article X, section 1, of the Montana constitution, the educationally relevant factors for the school funding formula under 20-9-309(3), and the increased costs associated with language immersion programs, a district creating an Indian language immersion program is entitled to the following in addition to the school funding formula in Title 20, chapter 9:

(a) (i) subject to subsections (3) and (4), for every Indian student participating in an Indian language immersion program, an additional American Indian achievement gap payment, as calculated in 20-9-306, multiplied by 2; and

(ii) for every non-Indian student participating in an Indian language immersion program, an additional Indian education for all payment, as calculated in 20-9-306, multiplied by 2; and

(b) for every full-time American Indian language and culture specialist teaching in an Indian language immersion program, a quality educator payment as calculated in 20-9-306.

(3) For a district operating an Indian language immersion program that improves the district's graduation rate for American Indians by 5 percentage points or more from the previous year as measured by the office of public instruction, the multiplier in subsection (2)(a)(i) must be increased to 3.

(4) If the money appropriated for Indian language immersion programs is insufficient to provide the amounts in subsections (2) and (3), the office of public instruction shall prorate the payments accordingly.

(5) The board of public education is encouraged to approve proposed variances to standards of accreditation for Indian language immersion programs when the board finds the proposal to be educationally sound and in alignment with the purpose described in 20-7-1402(2).

(6) The cultural and intellectual property rights from materials developed for an Indian language immersion program belong to the tribe to which the materials relate. Use of the cultural and intellectual property outside of the Indian language immersion program may be negotiated with the tribe. (Terminates June 30, 2019--sec. 10, Ch. 442, L. 2015.)”

Section 12. Section 20-9-306, MCA, is amended to read:

“20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “BASE” means base amount for school equity.

(2) “BASE aid” means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) the natural resource development K-12 funding payment for a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district, as referenced in subsection (10);

(c) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(d) the total quality educator payment;

(e) the total at-risk student payment;

(f) the total Indian education for all payment;

(g) the total American Indian achievement gap payment; and

(h) the total data-for-achievement payment.

(3) “BASE budget” means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total

at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, 100% of the total data-for-achievement payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) \$300,000 for fiscal year 2016 and \$305,370 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) \$300,000 for fiscal year 2016 and \$305,370 for each succeeding fiscal year for school districts with an ANB of more than 800, plus \$15,000 for fiscal year 2016 and \$15,269 for each succeeding fiscal year for each additional 80 ANB over 800;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) \$50,000 for fiscal year 2016 and \$50,895 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) \$50,000 for fiscal year 2016 and \$50,895 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus \$2,500 for fiscal year 2016 and \$2,545 for each succeeding fiscal year for each additional 25 ANB over 250;

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for the district's kindergarten through grade 6 elementary program:

(A) \$50,000 for fiscal year 2016 and \$50,895 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) \$50,000 for fiscal year 2016 and \$50,895 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus \$2,500 for fiscal year 2016 and \$2,545 for each succeeding fiscal year for each additional 25 ANB over 250; and

(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:

(A) \$100,000 for fiscal year 2016 and \$101,790 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

(B) \$100,000 for fiscal year 2016 and \$101,790 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus \$5,000 for fiscal year 2016 and \$5,090 for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) “Direct state aid” means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) “Maximum general fund budget” means a district’s general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, and the greater of the district’s special education allowable cost payment multiplied by:

(a) 175%; or

(b) the ratio, expressed as a percentage, of the district’s special education allowable cost expenditures to the district’s special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) “Natural resource development K-12 funding payment” means the payment of a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district. The total payment to school districts may not exceed the greater of 50% of the fiscal year 2012 oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) or 50% of the oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the school fiscal year in which the payment is provided, plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The amount of the natural resource development K-12 funding payment must be, subject to the limitations of this subsection (10), an amount sufficient to offset any estimated increase in statewide revenue from the general fund BASE budget levy provided for in 20-9-141 that is anticipated to result from increases in the basic or per-ANB entitlements plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The superintendent of public instruction shall incorporate a natural resource development K-12 funding payment calculated in compliance with this subsection (10) in preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112.

(11) “Over-BASE budget levy” means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(12) “Total American Indian achievement gap payment” means the payment resulting from multiplying \$205 in fiscal year 2016 and \$209 for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

(13) “Total at-risk student payment” means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(14) *“Total data-for-achievement payment” means the payment provided in 20-9-325 resulting from multiplying \$20 for fiscal year 2016 and \$20.36 for each succeeding fiscal year by the district’s ANB calculated in accordance with 20-9-311.*

~~(14)~~(15) “Total Indian education for all payment” means the payment resulting from multiplying \$20.88 in fiscal year 2016 and \$21.25 for each succeeding fiscal year times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

~~(15)~~(16) “Total per-ANB entitlement” means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of \$6,847 for fiscal year 2016 and \$6,970 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of \$5,348 for fiscal year 2016 and \$5,444 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of \$5,348 for fiscal year 2016 and \$5,444 for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of \$6,847 for fiscal year 2016 and \$6,970 for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

~~(16) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying \$20 for fiscal year 2016 and \$20.36 for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.~~

(17) "Total quality educator payment" means the payment resulting from multiplying \$3,113 in fiscal year 2016 and \$3,169 for each succeeding fiscal year by the number of full-time equivalent educators as provided in 20-9-327."

Section 13. Section 32-9-169, MCA, is amended to read:

"32-9-169. Mortgage servicer prohibitions. A mortgage servicer may not:

(1) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and regulations adopted under that act;

(2) fail to comply with applicable state and federal laws, rules, and regulations related to mortgage servicing;

(3) fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place the insurance when the mortgage servicer knows or has reason to know that there is insurance in effect;

(4) place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last-known coverage amount of insurance;

(5) fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage so that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no

lapse in coverage occurred so that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(6) fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that late penalties are not assessed or other negative consequences *do not* result regardless of whether the loan is delinquent unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.”

Section 14. Section 33-2-1112, MCA, is amended to read:

“33-2-1112. Exemptions – disclaimer – violations. (1) The provisions of 33-2-1111 and this section do not apply to any insurer, information, or transaction to the extent that the commissioner by rule or order has exempted that insurer, information, or transaction from the provisions of 33-2-1111 and this section.

(2) (a) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or a disclaimer may be filed by an insurer or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer that is the object of the disclaimer as well as the basis for disclaiming the affiliation.

(b) The commissioner shall approve or deny a disclaimer within 30 days of filing. If the commissioner denies a disclaimer under this section, the disclaiming party may request a hearing, which must be granted. The disclaiming party is not required to register under this section if the commissioner approves the disclaimer.

(3) The failure to file a registration statement, any summary of the registration statement, an enterprise risk report, or any amendment to the registration statement or enterprise risk ~~request~~ [report], as required by 33-2-1111 and this section, within the time specified for filing is a violation of 33-2-1111 and this section.”

Section 15. Section 45-8-340, MCA, is amended to read:

“45-8-340. Sawed-off firearm – penalty. (1) A person commits the offense of possession of a sawed-off firearm if the person knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) by a peace officer of this state or one of its political subdivisions;

(b) by an officer of the United States government authorized to carry weapons;

(c) by a person in actual service as a member of the national guard;

(d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);

(e) for educational or scientific purposes in which the firearms are incapable of being fired;

(f) by a person who has a valid federal tax stamp for the firearm, issued by the bureau of alcohol, tobacco, ~~and~~ firearms *and explosives*; or

(g) by a bona fide collector of firearms if the firearm is a muzzleloading, sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm shall be fined not less than \$200 or more than \$500 or be imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.”

Section 16. Section 46-23-509, MCA, is amended to read:

“46-23-509. Psychosexual evaluations and sexual offender designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct psychosexual evaluations of sexual offenders and sexually violent predators and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender’s designation if the offender has enrolled in and successfully completed the treatment phase of either the prison’s sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender’s risk level designation if the court finds by clear and convincing evidence that the offender’s risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk

assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The results of the ~~sex offender~~ *psychosexual* evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(8) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender with notice of the petition and notice of the hearing."

Section 17. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) New license plates issued under 61-3-303 or this section must be a standard license plate design first issued in 1989 or later or current collegiate or generic specialty license plate designs. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with new license plates if, upon renewal of registration under ~~this section 61-3-312~~, the license plates are 5 or more years old or will become older than 5 years during the registration period. New license plates must be issued in accordance with the implementation schedule adopted by the department under 61-3-315.

(iii) A vehicle owner may elect to keep the same license plate number from license plates issued before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) (a) All license plates must be metal and treated with a reflectorized background material according to specifications prescribed by the department. The word "Montana" must be placed on each license plate and, except for license plates that are 4 inches wide and 7 inches in length, the outline of the state of Montana must be used as a distinctive border on each standard license plate.

(b) Plates for semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more, and motor vehicles, other than motorcycles and quadricycles, must be 6 inches wide and 12 inches in length.

(c) Plates for motorcycles and quadricycles must be 4 inches wide and 7 inches in length.

(d) The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, fleet license plates, and standard license plates that are 4 inches wide and 7 inches in length, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the

markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may and a person with a low-speed restricted driver's license operating a low-speed electric vehicle or golf cart as provided in 61-5-122 must, upon written application on a form prescribed by the department, be issued

a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 18. Section 61-8-607, MCA, is amended to read:

“61-8-607. Lamps and other equipment on bicycles and mopeds. (1) A bicycle or moped when in use at dawn, dusk, or nighttime must be equipped with:

(a) a lamp on the front emitting a white light visible from a distance of at least 500 feet to the front. In lieu of a lamp affixed to the bicycle {or moped}, a bicyclist may use a lamp with equal intensity and visibility affixed to the cyclist’s helmet and facing forward.

(b) facing the rear, either a lamp emitting a red light visible from a distance of at least 500 feet to the rear or a red reflector visible from a distance of at least 500 feet to the rear when illuminated by low-beam motor vehicle headlamps; and

(c) reflective material large and reflective enough to be visible from the left and right sides from a distance of at least 500 feet when illuminated by low-beam motor vehicle headlamps.

(2) A bicycle or moped must be equipped with a brake enabling the operator to stop the bicycle {or moped} within no more than 25 feet from a speed of 10 miles an hour on dry, level, clean pavement.”

Section 19. Section 69-8-402, MCA, is amended to read:

“69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) (a) Except as provided in subsection (11), beginning January 1, 1999, 2.4% of each utility’s annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives.

(a)(b) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b)(c) A utility must receive credit toward annual funding requirements for the utility’s internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy

assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(e)(d) A utility at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d)(e) A customer's utility shall collect universal system benefits funds less any allowable credits.

(e)(f) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f)(g) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of this subsection (2), then the utility or large customer shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) (a) A cooperative utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the cooperative utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) Except as provided in subsection (11), a public utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 50% of the public utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(c) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities. Internal programs and activities may include providing low-income energy and weatherization assistance on Indian reservations.

(d) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) (a) Except as provided in subsection (11), a public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(i) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(ii) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2);

(iii) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements; and

(iv) the names of all large customers who either utilized credits to minimize or eliminate their charge pursuant to subsection (7) or received a reimbursement for universal system benefits related to expenditures from the utility during the previous reporting year.

(b) Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall:

(i) review the universal system benefits programs and, if necessary, submit recommendations regarding these programs to the legislature; and

(ii) review annual universal system benefits reports provided by utilities in accordance with subsection (8)(a) and compare those reports with reports provided by large customers to the department of revenue in accordance with subsection (10)(a) and identify large customers, if any, who are not in compliance with reporting requirements in accordance with this subsection (8) and subsection (10).

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. A report must be filed with the department even if a large customer is being reimbursed for a prior year's project. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance.

(11) A public utility with fewer than 50 customers is exempt from the requirements of this section."

Section 20. Section 69-8-412, MCA, is amended to read:

"69-8-412. Funds established – fund administrators designated – purpose of funds – department rulemaking authority to administer funds. (1) If, pursuant to ~~69-8-402(2)(f)~~ 69-8-402(2)(g) or (5)(d), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services shall expend the money in each representative fund on universal system benefits programs in the utility service territory from which the money was received.

(4) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual assessment of identified funding needs in the utility service territory from which the money was received. In assessing the funding needs, the departments shall solicit utility and public comment from the utility service territory from which the money was received. The annual assessment must also take into account existing utility and large customer universal system benefits programs expenditures."

Section 21. Section 77-1-125, MCA, is amended to read:

"77-1-125. Liability for unauthorized installation or construction of facility or structure on state trust land – penalty. (1) A person, other than the lessee of the affected state trust land, may not, after September 30, 1997:

(a) install or construct a road, pipeline, ditch, utility line, fence, building, or other facility or structure on state trust land without obtaining an easement, lease, license, or other written permission of the department; or

(b) disturb state trust land in anticipation of the installation or construction of the facility or structure.

(2) A person who violates subsection (1) is liable to the department for a civil penalty in an amount determined by the board. The penalty may be an amount up to three times the full market value of the land disturbed or affected or \$500, whichever is greater.

(3) In addition to the penalty provided for in subsection (1) (2), a person who installs or constructs a facility or structure on state trust land without permission is liable for any permanent damage to the state trust land and may be required to remove the facility or structure and to reclaim the disturbed land to the satisfaction of the department or to pay the department's cost of removal and reclamation.

(4) If the department allows the facility or structure to remain on state trust land, the department shall also require payment of full market value of any easement, lease, or license required for the facility or structure.

(5) The penalties provided in this section do not apply to the lessee of the affected state trust land. The remedies and penalties provided in a state trust easement, lease, or license and the statutes and regulations under which the easement, lease, or license was entered are the exclusive remedies and penalties that may be applied to a lessee.

(6) The penalties provided in this section do not apply to persons who have inadvertently installed or constructed pipelines or utility lines within 20 feet of the easement boundaries granted by the state.

(7) The penalties provided in this section do not apply to facilities or structures installed on lands acquired by the state through exchange or purchase that were authorized with the permission of the previous landowner or through authority granted by an appropriate government agency.”

Section 22. Section 80-7-1007, MCA, is amended to read:

“80-7-1007. Rulemaking authority. (1) Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter, each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments’ jurisdiction, including rules for the:

(a) implementation of the invasive species strategic plan adopted pursuant to 80-7-1006;

(b) transportation of an invasive species or any agent likely to be a carrier of an invasive species;

(c) designation, regulation, and treatment of an invasive species management area under 80-7-1008, including rules pertaining to:

(i) the use of quarantine regulations and measures;

(ii) the movement of vessels and equipment within, to, or from the area; and

(iii) the inspection and cleaning of vessels and equipment moving within, to, or from the area; and

(d) manner in which vessels and equipment, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence of an invasive species.

(2) The departments shall adopt rules for the administration of the statewide *invasive* species management area established in 80-7-1015, including rules specifying the method or methods for preventing the introduction or further introduction of invasive species into the state, and shall adopt rules for:

(a) the use of quarantine measures;

(b) the movement of vessels and equipment into the state; and

(c) the manner in which check stations will be used to inspect, clean, and decontaminate vessels and equipment moving into the state.”

Section 23. Section 85-7-1411, MCA, is amended to read:

“85-7-1411. Authority to acquire, construct, maintain, operate, and lease various undertakings. (1) An irrigation district may:

(a) construct, acquire by gift, purchase, or lease, or improve any undertaking, within or outside the irrigation district, and acquire by gift, purchase, or lease land or rights in land or water rights in connection with the undertaking;

(b) operate and maintain or enter into a contract for the operation and maintenance of any undertaking and furnish or enter into a contract for the furnishing of services, facilities, and commodities of the undertaking for its own use and for the use of public and private consumers within or outside the territorial boundaries of the irrigation district. However, an irrigation district may not furnish or enter into a contract for the furnishing of electrical energy

or capacity except to a qualified purchaser under the Public Utility Regulatory Policy *Policies Act of 1978.*

(c) lease any undertaking to a private or governmental entity.

(2) This section may not be construed to permit an irrigation district to condemn any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately owned. An irrigation district is expressly prohibited from condemning, pursuant to Title 70, chapter 30, property owned or controlled by a rural electric cooperative or utility.”

Section 24. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 65th legislature and previous legislatures.

Approved May 4, 2017

CHAPTER NO. 276

[SB 25]

AN ACT GENERALLY REVISING GAMING LAWS; REVISING DEFINITIONS; REVISING LAWS RELATED TO RAFFLES; REVISING THE OFFENSE OF TAMPERING WITH A VIDEO GAMBLING MACHINE; REVISING WHEN PERMITS FOR VIDEO GAMBLING MACHINES ON PREMISES WITHIN 150 FEET OF EACH OTHER MAY BE GRANTED; REVISING THE DEPARTMENT OF JUSTICE'S RULEMAKING AUTHORITY; AND AMENDING SECTIONS 23-5-112, 23-5-413, 23-5-622, AND 23-5-629, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

“23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) “Applicant” means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) “Application” means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) “Associated gambling business” means a person who provides a service or product to a licensed gambling business and who:

(a) has a reason to possess or maintain control over gambling devices;

(b) has access to proprietary information or gambling tax information; or

(c) is a party in processing gambling transactions.

(4) “Authorized equipment” means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(5) “Bingo” means a gambling activity played for prizes with a card bearing a printed design of 5 columns. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One or more numbers may appear in each square, except for the center square, which may be considered a free play. Numbers must be randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(6) “Bingo caller” means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(7) “Bingo session” means all activities incidental to a series of bingo games conducted by a licensed operator beginning when the first bingo ball is drawn in the first game of bingo.

(8) “Card game table” or “table” means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(9) “Card game tournament” means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(10) “Dealer” means a person with a dealer’s license issued under part 3 of this chapter.

(11) “Department” means the department of justice.

(12) “Distributor” means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, route operator, or operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed manufacturer, distributor, route operator, or operator.

(13) (a) “Gambling” or “gambling activity” means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in:

(i) a promotional ~~game~~ *games* of chance; ~~and does not include~~

(ii) amusement games regulated by Title 23, chapter 6, part 1.; *or*

~~(c)(iii) The term does not include social card games of bridge, cribbage, hearts, pinochle, pitch, rummy, solo, and whist played solely for prizes of minimal value, as defined by department rule.~~

(14) “Gambling device” means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(15) “Gambling enterprise” means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(16) (a) “Gift enterprise” means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; ~~or~~

(iii) an amusement game regulated under Title 23, chapter 6;

(iv) a savings promotion raffle offered by a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law and conducted in compliance with 23-5-413 that entitles individual members or depositors equal chances to win a designated prize by depositing a sum of money during a specified savings period; or

(v) an entry into a raffle as a result of paying membership dues or making a purchase of an item offered during a fundraising event held by a nonprofit organization.

(17) “Gross proceeds” means gross revenue received less prizes paid out.

(18) "House player" means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.

(19) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, under part 5 of this chapter, in a bingo game approved by the department under part 4 of this chapter, or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

(20) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

(21) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7, or a raffle authorized under Title 23, chapter 5, part 4, that is sponsored by a nonprofit organization and that is registered with the department. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(22) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(23) “Keno caller” means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(24) “License” means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(25) “Licensee” means a person who has received a license from the department.

(26) “Live card game” or “card game” means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(27) (a) “Lottery” means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

(28) “Manufacturer” means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator;

(b) possesses gambling devices or components of gambling devices for the purpose of testing them; or

(c) purchases gambling devices or components from licensed manufacturers, distributors, route operators, or operators as trade-ins or to refurbish, rebuild, or repair to sell to licensed manufacturers, distributors, route operators, or operators.

(29) “Nonprofit organization” means ~~a nonprofit corporation or nonprofit~~ *an organization established as a nonprofit to support* charitable, religious, scholastic, educational, veterans’, fraternal, beneficial, civic, senior citizens’, or service ~~organization established to support organizations’~~ charitable activities, scholarships or educational grants, or community service projects.

(30) “Operator” means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(31) “Permit” means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(32) “Person” or “persons” means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(33) “Premises” means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator’s license application and approved by the department.

(34) “Promotional game of chance” means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by

the department that was manufactured or intended for use for purposes other than gambling.

(35) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(36) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(37) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises and may sell gambling equipment to a distributor or manufacturer.

(38) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(39) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(40) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-413, MCA, is amended to read:

"23-5-413. Raffle prizes – investigations – rulemaking. (1) (a) The department shall investigate all violations of this part.

(b) The department may adopt rules to require recordkeeping for receipts and payouts under this part and to establish procedures to ensure the fair selection of winners.

(2) (a) A person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(b) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization may not exceed \$5,000. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

(c) The provisions of subsections (2)(a) and (2)(b) do not apply to a nonprofit organization, a college, a university, a public school district as

provided in 20-6-101 and 20-6-701, or a nonpublic school as described in 20-5-102(2)(e). The proceeds from the sale of tickets for a raffle conducted by a nonprofit organization, college, university, or school district may be used only for charitable purposes or to pay for prizes and may not be used for the administrative costs of conducting the raffle.

(3) (a) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state. *Nonprofit organizations may sell raffle tickets outside the state of Montana if the purchase is not prohibited in the jurisdiction in which the purchaser resides.*

(b) ~~The~~ *Except raffles sponsored by nonprofit organizations, the sale of raffle tickets may not be conducted over the internet. All raffle announcements or advertisements conducted over the internet must include this sale restriction, the name of the organization offering the raffle, and all raffle terms.*

Section 3. Section 23-5-622, MCA, is amended to read:

“23-5-622. Tampering with video gambling machine – penalty. (1) A person commits the offense of tampering with a video gambling machine if the person purposely or knowingly:

(a) ~~manipulates or attempts or conspires to manipulate the outcome or payoff of a video gambling machine by physical tampering or other interference with the proper functioning of the machine; or~~

(b) *exploits a hardware or software feature or combination of features that alters the video gambling machine’s intended and approved functioning, including:*

(i) *causing the machine to register more value in credits than deposited or won through play;*

(ii) *altering the chance element of the game;*

(iii) *altering the pay table of the game; or*

(iv) *permitting play contrary to the posted rules or recognized rules of play.*

(2) A violation of this section is a felony and must be punished in accordance with 23-5-162.”

Section 4. Section 23-5-629, MCA, is amended to read:

“23-5-629. Permit for premises within 150 feet of another premises.

(1) (a) A licensee may not be granted a permit for video gambling machines allowed on a premises under 23-5-611 if, at the time of application for the permit, the licensee’s premises are within 150 feet of, or have an external structural connection not amounting to a common internal wall, as that term is used in 23-5-117, to, a premises that already has a permit for video gambling machines allowed on a premises under 23-5-611 and if the two premises have one or more common owners *and operate in an interrelated manner, as defined by department rule.* A measurement of the distance between two premises must be taken between the nearest exterior wall of each premises.

(b) A premises for which an on-premises alcoholic beverages license was granted, was applied for, or the transfer of which was validly contracted for prior to February 1, 1995, is not subject to subsection (1)(a) during the 10-year period following October 1, 1995. A premises licensed before January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate family that owned the premises on January 1, 1985, if ownership of the premises on October 1, 1995, was within the immediate family that owned the premises on January 1, 1985.

(2) For purposes of this section, the following definitions apply:

(a) “Affiliate” means a person or entity that controls, is controlled by, or is under common control with another person or entity. The term includes but is not limited to a premises that has:

(i) shareholders, partners, or other individual owners, by trust or otherwise, who are also shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

(ii) shareholders, partners, or other individual owners, by trust or otherwise, who are income taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the other premises;

(iii) an agreement with the other premises or the other premises' shareholders, partners, or other individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the agreement has other financial components, such as a landlord and tenant relationship or noninstitutional financing; or

(iv) a premises rental agreement with the other premises or its shareholders, partners, or other individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined by a Montana independent appraisers association appraisal done at the time that the rental rate is set or changed.

(b) "Common owner" means an affiliate, immediate family member, manager, parent or subsidiary business entity, investor, person or entity with a commonality of business interests, or other person or entity able to influence the operator or manager of the premises or to prevent the operator or manager from fully pursuing the premises' separate interests.

(c) "Commonality of business interests" means:

(i) a contract, deed, contract for deed, concession agreement, or lease, rental, or other agreement involving real property, with the same person or entity, except:

(A) a commercial mall with at least 50,000 square feet and at least eight separate businesses; or

(B) an agreement by a licensee to lease premises from a person or entity that also leases other premises in the same building or structure to one or more licensees if there is no other common ownership between any of the licensees; or

(ii) that the same person or entity, except a financial institution, provides the financing for:

(A) the purchase of the liquor license;

(B) the purchase of the premises; or

(C) operating expenses of more than \$25,000, except for expenses allowed under 23-5-130.

(d) "Control" means the power to cause or direct management and policies through ownership, contract, or otherwise.

(e) "Immediate family" means a parent, children, siblings, grandchildren, grandparents, nieces, and nephews.

(f) "Investor" means a person who:

(i) advances or pledges to advance funds with the expectation of a specified or unspecified return;

(ii) guarantees a loan, except a loan guaranteed by a route operator who would not otherwise be considered a common owner; or

(iii) has an option to participate in the premises."

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 4, 2017

CHAPTER NO. 277

[SB 26]

AN ACT REVISING LAWS REGARDING SEXUAL INTERCOURSE WITHOUT CONSENT; PROVIDING A MAXIMUM PENALTY WHEN THE OFFENDER IS 18 YEARS OF AGE OR YOUNGER AND THE VICTIM IS 14 YEARS OF AGE OR OLDER, IT IS A FIRST OFFENSE AND NO FORCE WAS USED; PROVIDING THAT AN 18-YEAR-OLD WHO IS CONVICTED OF SEXUAL INTERCOURSE WITHOUT CONSENT REGARDING A VICTIM WHO IS AGE 14 OR OLDER DOES NOT HAVE TO REGISTER AS A SEX OFFENDER AS LONG AS NO FORCE WAS USED; AMENDING SECTIONS 45-5-503, 46-18-231, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-503, MCA, is amended to read:

“45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person’s spouse, as provided in 45-5-501(1)(a)(ii)(D).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3), and (4), and (5) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury ~~upon~~ *on* anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender’s offense occurred during a time period in which each offender could have reasonably known of the other’s offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury ~~upon~~ *on* a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25

years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) If the victim is at least 14 years of age and the offender is 18 years of age or younger, the offender may be punished by imprisonment in the state prison for a term of not more than 5 years and may be fined not more than \$10,000 if:

(a) the offender has not previously been found to have committed or been adjudicated for a sexual offense as defined in 46-23-502;

(b) a psychosexual evaluation of the offender has been prepared and the court finds that registration is not necessary for protection of the public and that relief from registration is in the public's best interest; and

(c) the court finds that the alleged conduct was consensual as indicated by words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact.

~~(5)(6)~~ In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

~~(6)(7)~~ As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or *the act of flight* after the attempt or commission.

~~(7)(8)~~ If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

Section 2. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(viii) 45-5-503(2) through ~~(4)~~ (5), sexual intercourse without consent;

(ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was 18 years of age or older at the time of the offense;

(xi) 45-5-625(4), sexual abuse of children;

(xii) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

(xiii) 45-9-102(4), criminal possession of an opiate;

(xiv) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

(xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed \$50,000."

Section 3. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) “Residence” means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) “Sexual offender evaluator” means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) “Sexual offense” means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person’s physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), ~~45-5-503~~ 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) “Sexual or violent offender” means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) “Sexually violent predator” means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) “Transient” means an offender who has no residence.

(13) “Violent offense” means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a).”

Section 4. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved May 4, 2017

CHAPTER NO. 278

[SB 27]

AN ACT REVISING TAX INCREMENT FINANCING LAWS; REQUIRING A PUBLIC MEETING WITH OPPORTUNITY FOR PUBLIC COMMENT FOR URBAN RENEWAL AGENCIES; REQUIRING LOCAL GOVERNMENT ANNUAL FINANCIAL REPORTS TO INCLUDE INFORMATION ON THE FINANCIAL ACTIVITIES OF DISTRICTS USING TAX INCREMENT FINANCING; REQUIRING AN URBAN RENEWAL AGENCY TO INCLUDE CERTAIN ADDITIONAL INFORMATION IN ITS ANNUAL REPORT; AND AMENDING SECTIONS 2-7-503, 7-15-4221, 7-15-4236, 7-15-4237, AND 7-15-4279, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

“2-7-503. Financial reports and audits of local government entities.

(1) (a) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period.

(b) *The financial report of a local government that has authorized the use of tax increment financing pursuant to 7-15-4282 must include a report of the financial activities related to the tax increment financing provision.*

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of \$500,000, regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and

use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the state treasurer and must be deposited in the enterprise fund to the credit of the department.

(7) Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517.”

Section 2. Section 7-15-4221, MCA, is amended to read:

“7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, the modification is subject to any rights at law or in equity that a lessee or purchaser or the lessee’s or purchaser’s successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) Any urban renewal plan proposed for modification to provide tax increment financing for the district must be proposed with consideration for the county and school districts that include municipal territory.

(4) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are validated.

(5) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan, *which must include a public hearing.*”

Section 3. Section 7-15-4236, MCA, is amended to read:

“7-15-4236. Conduct of business. The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners ~~shall constitute~~ *constitutes* a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present unless in any case the bylaws shall require a larger number. *Meetings of the board of commissioners must be open to the public as provided in 2-3-203 with the opportunity for public comment as provided in 2-3-103.*”

Section 4. Section 7-15-4237, MCA, is amended to read:

“7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under part 43 and this part shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year. A copy of the annual report must be made available upon request to the county and school districts that include municipal territory.

(2) The report must include a complete financial statement setting forth its assets, liabilities, income, and operating expenses and the amount of the tax increment as of the end of the fiscal year. *The report must describe the expenditures of tax increment in the preceding fiscal year and how the expenditures comply with the approved urban renewal plan or comprehensive development plan for the district.*

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that the report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.”

Section 5. Section 7-15-4279, MCA, is amended to read:

“7-15-4279. Targeted economic development districts. (1) A local government may, by ordinance and following a public hearing, authorize the creation of a targeted economic development district in support of value-adding economic development projects. The purpose of the district is the development of infrastructure to encourage the location and retention of value-adding projects in the state.

(2) A targeted economic development district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned:

(i) for uses by a local government under Title 76, chapter 2, part 2 or 3, in accordance with the area growth policy, as defined in 76-1-103; or

(ii) if a county has not adopted a growth policy, then for uses in accordance with the development pattern and zoning regulations or the development district adopted under Title 76, chapter 2, part 1;

(c) may not comprise any property included within an existing tax increment financing district;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements as stated in the resolution of necessity adopted under 7-15-4280;

(e) must, prior to its creation, have in place a comprehensive development plan adopted by the local governments that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) The local government may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294 for the targeted economic development district. If the local government uses tax increment financing, the use of and purpose for tax increment financing must be specified in the comprehensive development plan required in subsection (2)(e). *The plan must also describe how the expenditure of tax increment will promote the development of infrastructure to encourage the location and retention of value-adding projects in the targeted economic development district.*

~~(4)~~(4) For the purposes of 7-15-4277 through 7-15-4280:

(a) “secondary value-added products or commodities” means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce;

(b) “secondary value-adding industry” means a business that produces secondary value-added products or commodities or a business or organization that is engaged in technology-based operations within Montana that, through the employment of knowledge or labor, adds value to a product, process, or export service resulting in the creation of new wealth.”

Approved May 4, 2017

CHAPTER NO. 279

[SB 29]

AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, 46-18-222, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Aggravated sexual intercourse without consent. (1) A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent commits the offense of aggravated sexual intercourse without consent.

(2) A person convicted of aggravated sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

Section 2. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and [section 1], the term "~~without consent~~" "*consent*" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) ~~the victim is compelled to submit by force against the victim or another; or an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;~~

(ii) *a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and*

(iii) *lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.*

(ii)(b) ~~subject~~ Subject to subsections ~~(1)(b)~~ (1)(c) and ~~(1)(c)~~ (1)(d), the victim is incapable of consent because the victim is:

~~(A)~~(i) mentally disordered or incapacitated;

~~(B)~~(ii) physically helpless;

~~(C)~~(iii) overcome by deception, coercion, or surprise;

~~(D)~~(iv) less than 16 years old;

~~(E)~~(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

~~(F)~~(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

~~(1)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(2)~~(B) is an employee, contractor, or volunteer of the youth care facility; or

~~(3)~~(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms

are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(c) Subsection (a)(ii)(E) (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

(d) Subsections (a)(ii)(F) (1)(b)(vi) and (a)(ii)(G) (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in subsection (1) [section 1], the term “force” means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) “Parole”:

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) “Probation” means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) “Supervising authority” includes a court, including a youth court, a county, or the department of corrections.”

Section 3. Section 45-5-503, MCA, is amended to read:

“45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse ~~without consent~~ with another person *without consent or with another person who is incapable of consent* commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person’s spouse, as provided in 45-5-501(a)(ii)(D)(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of ~~not less than 2 years or more than 100~~ *not more than 20* years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender *in the course of committing a violation of this section* was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

Section 4. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender

must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- (i) 45-5-102, deliberate homicide;
- (ii) 45-5-303, aggravated kidnapping;
- ~~(iii) 45-5-503, sexual intercourse without consent;~~
- ~~(iv)~~(iii) 45-5-625, sexual abuse of children; ~~or~~
- ~~(v)~~(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; *or*
- (v) [section 1], *aggravated sexual intercourse without consent.*

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- (i) 45-5-103, mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-302, kidnapping;
- (iv) 45-5-401, robbery; *or*
- (v) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

- (a) shall serve the entire sentence;
- (b) shall serve the sentence in prison;
- (c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;
- (d) may not be paroled; and
- (e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 5. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

- (1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), or [section 1] and the judge determines, based on the findings contained in a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 6. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), [section 1], 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

Section 8. Applicability. [This act] applies to crimes committed on or after [the effective date of this act].

Approved May 4, 2017

CHAPTER NO. 280

[SB 42]

AN ACT REVISING THE MAJOR FACILITY SITING LAWS; REQUIRING CONSULTATION WITH APPLICANTS UNDER THE MAJOR FACILITY SITING ACT; MODIFYING AGENCY REPORTING AUTHORITY;

MODIFYING CORRIDOR WIDTH AND SELECTION REQUIREMENTS; EXPANDING LANDOWNER NOTICE REQUIREMENTS; PROVIDING FOR PUBLIC NOTICE AND COMMENT ON PROPOSED FACILITY LOCATION ADJUSTMENTS; AND AMENDING SECTIONS 75-20-216, 75-20-219, 75-20-302, AND 75-20-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-216, MCA, is amended to read:

“75-20-216. Study, evaluation, and report on proposed facility – assistance by other agencies. (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies.

Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall:

(a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3); ~~The department shall;~~

(b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency; *and*

(c) *if a modification of a proposed facility is needed as determined by the department, consult with the applicant. The proposed modification must be analyzed in the environmental review document prepared under Title 75, chapter 1, parts 1 through 3.*

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the ~~board~~ *department* and pursuant to rules adopted by the ~~department board~~, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation and the consumer counsel shall report to the department information relating to the impact of the proposed *site facility* on each department's area of expertise. ~~The report may include opinions as to the advisability of granting, denying, or modifying the certificate.~~ The department shall allocate funds obtained from filing fees to the departments making reports and to the office of consumer counsel to reimburse them for the costs of compiling information and issuing the required report."

Section 2. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to certificate. (1) (a) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(b) If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the department shall grant, deny, or modify the amendment with conditions as it considers appropriate.

(c) *If the department determines that a modification of the proposed amendment to the certificate is needed, it shall consult with the applicant.*

(2) In those cases in which the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the department shall automatically grant the amendment either as applied for or upon terms or conditions that the department considers appropriate.

(3) If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of showing by clear and convincing evidence that the department's determination is not reasonable.

(4) If an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department or board, the amendment must be processed under the applicable statutes administered by the department or board."

Section 3. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. (1) If the department determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon the modification, provided that *the department consulted the applicant and* the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) The department may require the applicant to post performance bonds to guarantee successful reclamation and revegetation of the project area."

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4);

(e) a statement confirming that notice was provided pursuant to subsection (5); and

(f) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.

(5) (a) (i) *Except as provided in subsection (5)(a)(ii), for* For a facility defined in 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a ~~1-mile-wide~~ *500-foot-wide* facility siting corridor along the facility route.

(ii) *Prior to preparation of the environmental review or the draft environmental impact statement, the department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in which a corridor considered in the environmental review document should be more or less than 500 feet wide. The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is more or less than 500 feet in width, the department shall provide a written justification. The*

department may not modify a corridor after issuance of the final environmental review document.

~~(b) The department shall provide written notice of the availability of the draft each environmental review document to each owner of property within the 1-mile-wide facility siting corridor identified in the environmental review as the department's preferred alternative facility siting a corridor. No more than 60 days prior to the availability of the draft each environmental review document, the names and addresses of the property owners must be obtained from the property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice must:~~

~~(i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a receipt verifying that the property owner received the statement.~~

~~(ii) inform the property owner that the property owner's property is located within the department's preferred alternative 1-mile-wide facility siting a corridor;~~

~~(iii) inform the property owner about how a copy of the environmental review document may be obtained; and~~

~~(iv) inform the property owner of the property owner's rights under this chapter concerning the location of the facility and that more information concerning those rights may be obtained from the department.~~

~~(c) If there is more than one name listed on the property tax rolls for a single property, the notice must be mailed to the first listed property owner at the address on the property tax rolls.~~

~~(d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b) are satisfied.~~

~~(e) The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide corridor in accordance with 75-20-301. If the department determines that it will select a facility siting corridor that is completely or partially different from the preferred alternative facility siting corridor described in the draft environmental review, it shall, before issuing the certificate, provide notice of its intended facility siting corridor and an opportunity to comment to property owners within the 1-mile-wide facility siting corridor that deviates from the preferred alternative. Property owners must be determined and notice must be given in the same manner as provided in subsection (5)(b).~~

~~(f) If the certificate holder complies with subsection (6), a certificate holder may modify the siting of the facility within the 1-mile-wide corridor without complying with the provisions of 75-20-219 if the alternate siting is done in a manner that minimizes the impact on residential areas, crop land, and sensitive sites.~~

(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor designated pursuant to subsection (5) *approved facility siting corridor* to the department. The adjustment must be accompanied by the written agreement of the affected property owner and all contiguous property owners that would be affected. The submission must include a map showing the approved facility location *siting corridor* and the proposed adjustment. *At the time of submission to the department, the adjustment must be accompanied by a copy of a legal notice published in a newspaper of general circulation in the area of the adjustment. The legal notice must specify that public comments on the adjustment may be submitted to the department within 10 days of the publication date of the notice.*

(b) The certificate holder may construct the facility as described in the submission unless the department notifies the certificate holder within 15 days of the submission that the department has determined that:

(i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the department would have selected a different location *siting corridor* for the facility; or

(ii) the adjustment would materially increase unmitigated adverse impacts.

(c) ~~Siting of a facility within the corridor designated pursuant to subsection (5) or an~~ An adjustment pursuant to subsection (6)(a) is not subject to:

(i) Title 75, chapter 1, part 2;

(ii) a certificate amendment under 75-20-219; or

(iii) a board review under 75-20-223.

(d) (i) *For each facility, the department shall maintain a list of persons who requested to receive electronic notice of any adjustment submitted pursuant to this subsection (6).*

(ii) *Upon receipt of a submitted adjustment, the department shall:*

(A) *post information about the adjustment on the department's website; and*

(B) *electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where information about the adjustment may be viewed."*

Approved May 4, 2017

CHAPTER NO. 281

[SB 43]

AN ACT GENERALLY REVISING LAWS GOVERNING THE LONG-RANGE BUILDING PROGRAM; PROVIDING A DEFINITION OF "LONG-RANGE BUILDING PROGRAM-ELIGIBLE BUILDING"; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO COMPILE A STATEWIDE FACILITY AND CONDITION ASSESSMENT FOR CERTAIN STATE-OWNED BUILDINGS; AMENDING SECTIONS 17-7-201 AND 17-7-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-201, MCA, is amended to read:

"17-7-201. Definitions. In this part, the following definitions apply:

(1) (a) "Building" includes a:

(i) building, facility, or structure constructed or purchased wholly or in part with state money;

(ii) building, facility, or structure at a state institution;

(iii) building, facility, or structure owned or to be owned by a state agency, including the department of transportation.

(b) The term does not include a:

(i) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(ii) facility or structure used as a component part of a highway or water conservation project.

(2) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

(3) "High-performance building" means a building that integrates and optimizes all major high-performance building attributes, including but not limited to:

(a) energy efficiency;

(b) durability;

- (c) life-cycle performance; and
- (d) occupant productivity.

(4) (a) “Long-range building program-eligible building” means a building, facility, or structure:

(i) owned by a state agency and for which the operation and maintenance is funded with state general fund money; or

(ii) that supports academic missions of the university system and for which the operation and maintenance is funded with current unrestricted university funds.

(b) The term does not include a building, facility, or structure:

(i) owned by a state agency and for which the operation and maintenance is entirely funded with state special revenue, federal special revenue, or proprietary funds; or

(ii) that supports nonacademic functions of the university system and for which the operation and maintenance is funded from nonstate and nontuition sources.”

Section 2. Section 17-7-202, MCA, is amended to read:

“17-7-202. Preparation of building programs and submission to department of administration – statewide facility inventory and condition assessment. (1) Before July 1 of each even-numbered year, each state agency and institution shall submit to the department of administration, on forms furnished by the department, a proposed long-range building program, if any, for the agency or institution. Each agency and institution shall furnish any additional information requested by the department relating to the utilization of or need for buildings.

(2) (a) *Except as provided in subsection (3), the department shall compile and maintain a statewide facility inventory and condition assessment that:*

(i) *for each state-owned building:*

(A) *identifies its location and total square footage;*

(B) *identifies the agency or agencies using or occupying the building and how much square footage each agency uses or occupies;*

(C) *lists the current replacement value of the building in its entirety and each agency’s portion of the building;*

(D) *identifies whether the building is a long-range building program-eligible building;*

(ii) *for each long-range building program-eligible building:*

(A) *includes a facility condition assessment of the building and an itemized list of the building’s deficiencies; and*

(B) *compares the building’s current building deficiency ratio to its deficiency ratio in the previous biennium.*

(b) *The department may contract with a private vendor to collect, analyze, and compile the building information required in this subsection (2).*

(c) *The facility inventory and condition assessment must be updated as determined by the department.*

(d) *The department may incorporate in the statewide facility inventory and condition assessment any facility condition assessment or similar document compiled by an agency.*

(e) *The department shall provide the statewide facility inventory and condition assessment, including a calculation of the deferred maintenance backlog and overall building deficiency ratio of the long-range building program-eligible buildings, to the office of budget and program planning and the legislative finance committee by September 1 of each even-numbered year in an electronic format.*

(3) *The department is not required to include a state-owned building that has a current replacement value of \$150,000 or less in the facility inventory and condition assessment.*

(2)(4) The department shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary and conduct whatever surveys are necessary in order to provide a factual basis for determining the need for and the feasibility of the construction of buildings. The information compiled by the department shall be submitted to the governor before December 1 of each even-numbered year.”

Section 3. Coordination instruction. If House Bill No. 2 is passed and approved and does not include funding to the architecture and engineering division of the department of administration for compiling a statewide facility inventory and condition assessment, then [this act] is void.

Section 4. Effective date. [This act] is effective July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 282

[SB 45]

AN ACT REVISING TREATMENT COURT STRUCTURE; REVISING PROCESSES USED TO ASSIGN AN INCENTIVE OR SANCTION AN OFFENDER; ALLOWING VIOLENT OFFENDERS TO BE ELIGIBLE TO PARTICIPATE IN A DRUG TREATMENT COURT AND MENTAL HEALTH TREATMENT COURT; AND AMENDING SECTIONS 46-1-1104 AND 46-1-1204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-1-1104, MCA, is amended to read:

“46-1-1104. Drug treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a drug treatment court under which drug offenders may be processed to address an identified substance abuse problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in drug treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement.

(3) A drug treatment court may grant reasonable incentives under a written agreement if the court finds that a drug offender is performing satisfactorily in drug treatment court, is benefiting from education, treatment, and rehabilitation, has not engaged in criminal conduct, and has not violated the terms and conditions of the agreement. Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement, including incarceration or ~~rejection~~ *termination* from the drug treatment court, if the court finds that the drug offender is not performing satisfactorily in drug treatment court, is not benefiting from education, treatment, or rehabilitation, has engaged in conduct rendering the offender unsuitable for the program,

has otherwise violated the terms and conditions of the agreement, or is for any reason unable to participate. Sanctions may include *but are not limited to*:

- (a) a short-term jail sentence;
- (b) fines;
- (c) extension of time in the program;
- (d) peer review;
- (e) geographical restrictions;
- (f) termination; or
- (g) contempt of court.

(5) Upon successful completion of drug treatment court, a drug offender's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A drug offender who successfully completes the program may be given credit for the time the offender served in the drug treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a drug treatment court or to continue the operation of an existing drug treatment court shall establish a local drug treatment court team.

(7) The drug treatment court team shall, when practicable, conduct a staff meeting prior to each drug treatment court session to discuss and provide updated information regarding drug offenders. After determining the offender's progress or lack of progress, the *court, with input from the drug treatment court team*, shall ~~agree on~~ *determine* the appropriate incentive or sanction to be applied. ~~If the drug treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting.~~

(8) The provisions of this part apply only to offenders who qualify for participation based on qualifications established by each drug treatment court. The provisions of this part do not apply to drug offenders who have been convicted of a sexual ~~or violent~~ offense, as defined in 46-23-502. This part does not confer a right or expectation of a right to participate in a drug treatment court and does not obligate a drug treatment court to accept any offender. The establishment of a drug treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each drug treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(9) Each drug offender shall contribute to the cost of ~~substance abuse treatment~~ *drug treatment court* in accordance with 46-1-1112(2).

(10) A drug treatment court coordinator is responsible for the general administration of a drug treatment court under the direction of the drug treatment court judge.

(11) The supervising agency shall timely forward information to the drug treatment court concerning the drug offender's progress and compliance with any court-imposed terms and conditions.

(12) A department of corrections probation and parole officer may participate in a drug treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a drug treatment court. The department of corrections may not authorize its

probation and parole officers to supervise a participant of a drug treatment court program who has not been convicted of a felony offense and committed to the supervision of the department.”

Section 2. Section 46-1-1204, MCA, is amended to read:

“46-1-1204. Mental health treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a mental health treatment court under which persons with a mental disorder who are charged with a criminal offense may be processed to address an identified mental health problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in a mental health treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement.

(3) A mental health treatment court may grant reasonable incentives under a written agreement. Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement for failure to comply with the agreement. Prior to imposition of a sanction, the mental health treatment court team shall review the participant’s individual treatment program and the participant’s conduct. If the mental health treatment court team determines that the participant’s failure to comply:

(a) was not willful, was a symptom of a mental disorder, or was a result of an inappropriate treatment plan, the court may impose sanctions, including *but not limited to*:

- (i) fines;
- (ii) extension of time in the program;
- (iii) peer review; or
- (iv) geographical restrictions; or

(b) was willful, not a symptom of a mental disorder, and not the result of an inappropriate treatment plan, the court may impose sanctions, including:

- (i) a short-term jail sentence;
- (ii) termination of participation in the program; or
- (iii) contempt of court.

(5) Upon successful completion of mental health treatment court, a participant’s case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the mental health treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A participant who successfully completes the program must be given credit for the time the participant served in the mental health treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a mental health treatment court or to continue the operation of an existing mental health treatment court shall establish a local mental health treatment court team.

(7) The mental health treatment court team shall, when practicable, conduct a staff meeting prior to each mental health treatment court session to discuss and provide updated information regarding participants. After determining the participant’s progress or lack of progress, *the court, with input from the*

mental health treatment court team, shall ~~agree on~~ *determine* the appropriate incentive or sanction to be applied. ~~If the mental health treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting.~~ The provisions of this part apply only to persons with a mental disorder who are charged with a criminal offense and who qualify for participation based on qualifications established by each mental health treatment court. The provisions of this part do not apply to participants who have been convicted of a sexual ~~or violent~~ offense, as defined in 46-23-502. This part does not confer a right or expectation of a right to participate in a mental health treatment court and does not obligate a mental health treatment court to accept any offender. The establishment of a mental health treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each mental health treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(8) Each participant shall contribute to the cost of treatment and the program in accordance with 46-1-1212(2). A mental health treatment court coordinator is responsible for the general administration of a mental health treatment court under the direction of the mental health treatment court judge. The supervising agency shall timely forward information to the mental health treatment court concerning the participant's progress and compliance with any court-imposed terms and conditions.

(9) A department of corrections probation and parole officer may participate in a mental health treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a mental health treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a mental health treatment program who has not been convicted of a felony offense and committed to the supervision of the department."

Approved May 4, 2017

CHAPTER NO. 283

[SB 46]

AN ACT REVISING THE APPORTIONMENT AND DISTRIBUTION OF CERTAIN FUNDS AND INTEREST EARNINGS TO MONTANA COUNTIES; DECREASING THE TIME REQUIRED FOR DISTRIBUTION OF FOREST RESERVE AND CERTAIN OTHER FEDERAL FUNDS AND INTEREST EARNINGS TO MONTANA COUNTIES; PROVIDING THAT NO INTEREST ON THESE FUNDS ARE PAID TO COUNTIES IF HELD BY STATE FOR 5 DAYS OR LESS; ALLOWING FUNDS TO BE APPORTIONED AND DISTRIBUTED PURSUANT TO SUBSEQUENT FEDERAL ACTS; AMENDING SECTIONS 17-3-211, 17-3-212, AND 17-3-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-211, MCA, is amended to read:

“17-3-211. Forest reserve money and other federal funds. (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, Public Law 110-343, and all acts subsequent to them, shall divide and distribute all forest reserve, Public Law 106-393, and Public Law 110-343 funds received by the state, ~~plus interest earned;~~ to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within ~~30~~ *5 business days* after receiving full payment, as directed by the department.

(2) ~~The~~ *If the* forest reserve money, the Public Law 106-393 money, and Public Law 110-343 money ~~must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 and Public Law 110-343 account, as appropriate are not distributed within 5 business days of receipt by the state, all interest earnings must be credited to the appropriate counties.”~~

Section 2. Section 17-3-212, MCA, is amended to read:

“17-3-212. Apportionment of forest reserve funds and other federal funds among counties. (1) The forest reserve funds, all Public Law 106-393 funds, all Public Law 110-343 funds, *funds received pursuant to a similar subsequent act*, and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the department. The department shall apportion all forest reserve funds, all Public Law 106-393 funds, all Public Law 110-343 funds, and earned interest, *as provided in 17-3-211*, for allocation among the counties in which the forest reserve is situated based upon federal law and this section.

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties.”

Section 3. Section 17-3-213, MCA, is amended to read:

“17-3-213. Allocation of forest reserve funds and other federal funds – options provided in federal law. (1) The board of county commissioners in each county shall decide among payment options provided in subsections (2) through (6), as provided in Public Law 106-393, ~~and~~ Public Law 110-343, *and any similar subsequent act* to determine how the forest reserve funds, Public Law 106-393, funds, ~~and~~ Public Law 110-343 funds, *and funds received pursuant to a similar subsequent act* apportioned to each county must be distributed by the county treasurer pursuant to this section.

(2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500 *or any similar subsequent act*, all funds received must be distributed as provided in subsection (5).

(3) (a) Except as provided in subsection (4), if a county elects to receive the county’s full payment under Public Law 106-393 *or any similar subsequent act*, a minimum of 80% up to a maximum of 85% of the county’s full payment must be designated by the county for distribution as provided in subsection (5).

(b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393 *or any similar subsequent act*.

(4) If a county’s full payment under Public Law 106-393 *or any similar subsequent act* is less than \$100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

(5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:

(a) to the general road fund, 66 2/3% of the amount designated;

(b) to the following countywide school levies, 33 1/3% of the amount designated:

(i) county equalization for elementary schools provided for in 20-9-331;
 (ii) county equalization for high schools provided for in 20-9-333;
 (iii) the county transportation fund provided for in 20-10-146; and
 (iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(6) The apportionment of money to the funds provided for under subsection (5)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under subsection (5)(b) is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (5)(b).

(7) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 2/3% distributed under subsection (5)(a) for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.

(8) Except as provided in subsection (9), if a county elects to receive the county's full payment under Public Law 110-343 *or any similar subsequent act*, not less than 80% but not more than 85% of the funds must be expended in the same manner as provided in subsection (5). A county may reserve not more than 7% of the county's full payment for projects in accordance with Title III of section 601 of Public Law 110-343. The balance of the funds may be:

(a) reserved for projects in accordance with Title II of section 601 of Public Law 110-343 *or any similar subsequent act*; or

(b) returned to the United States.

(9) (a) If a county's full payment is more than \$100,000 but less than or equal to \$350,000, the county may use all of the funds as provided in Title II or Title III of section 601 of Public Law 110-343 *or any similar subsequent act*, or return the funds to the United States.

(b) If a county's full payment is less than or equal to \$100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5)."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 284

[SB 73]

AN ACT REVISING LAWS RELATED TO LIVESTOCK LOSS; DELAYING TERMINATION OF THE STATUTORY APPROPRIATION FOR THE LIVESTOCK LOSS MITIGATION RESTRICTED ACCOUNT AND THE PREDATORY ANIMAL STATE SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION FOR THE LIVESTOCK LOSS REDUCTION RESTRICTED ACCOUNT; DELAYING TERMINATION OF THE LIVESTOCK LOSS REDUCTION RESTRICTED ACCOUNT; AMENDING SECTIONS 2-15-3114, 15-24-925, 17-7-502, AND 81-1-113, MCA, SECTION 13, CHAPTER 339, LAWS OF 2011, AND SECTION 8, CHAPTER 349, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3114, MCA, is amended to read:

“2-15-3114. Funding of programs – contingency. The awarding of grants and reimbursements and the performance of duties pursuant to 2-15-3111 through 2-15-3113 are contingent upon the amount of money available in the accounts provided for in 81-1-110 through ~~81-1-112~~ *81-1-113.*”

Section 2. Section 15-24-925, MCA, is amended to read:

“15-24-925. Reimbursement to department – transmission of fees to state. (1) The department may withhold 2% of the money received under 15-24-921 as reimbursement for the collection of the fee on livestock unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis.

(2) The department shall designate the amount received from the fee imposed on sheep and the amount received from the fee imposed on all other livestock and shall specify the separate amounts in the report to the department of livestock. The money, when received by the department, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock. Interest earned on money in the account must be deposited in the account.

(3) ~~The amount of At least \$350,000 is~~ *must be* transferred from the state special revenue account in subsection (2) to the predatory animal special revenue account provided for in 81-7-106 in each fiscal year.”

Section 3. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; *81-1-113*; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other

obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.)"

Section 4. Section 81-1-113, MCA, is amended to read:

"81-1-113. (Temporary) Livestock loss reduction restricted account.

(1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss reduction restricted special revenue account. The account is administered by the department.

(2) Except as provided in subsection ~~(5)~~ (6), the money transferred to the account is restricted to the purposes of reducing predation on livestock by wolves and grizzly bears and reducing expenses incurred by livestock owners, including but not limited to veterinary bills, caused by wolves and grizzly bears.

(3) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for either or both of the purposes of subsection (2) must be deposited in the account provided for in subsection (1).

(4) *Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for carrying out the purposes of this section.*

~~(4)~~(5) Except as provided in subsection ~~(5)~~ (6), to reduce predation of livestock, the livestock loss board:

(a) shall use at least half of the money transferred into the account pursuant to subsection (2) on nonlethal, preventative measures; and

(b) may use half of the money transferred into the account pursuant to subsection (2) to contract with the United States department of agriculture wildlife services.

(5)(6) Up to 10% of the money in the account may be used for administrative expenses. (Terminates June 30, 2021--sec. 8, Ch. 349, L. 2015 2023.)”

Section 5. Section 13, Chapter 339, Laws of 2011, is amended to read:

“Section 13. Termination. [Sections 1(3), 2(3), and 7] terminate June 30, 2017 2023.”

Section 6. Section 8, Chapter 349, Laws of 2015, is amended to read:

“Section 8. Termination. [This act] terminates June 30, 2021 2023.”

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Termination. [This act] terminates June 30, 2023.

Approved May 4, 2017

CHAPTER NO. 285

[SB 92]

AN ACT ALLOWING FOR APPOINTMENT OF PROXY DECISIONMAKERS FOR CERTAIN HOSPITALIZED PATIENTS; ESTABLISHING PROCEDURES FOR NAMING PROXY DECISIONMAKERS; ALLOWING HEALTH CARE PROVIDERS TO SERVE AS PROXY DECISIONMAKERS; PROVIDING FOR REVIEW BY MEDICAL ETHICS COMMITTEES; PROVIDING IMMUNITY; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

- (1) “Adult” means any person 18 years of age or older.
- (2) “Advanced practice registered nurse” means an individual who is licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.
- (3) “Attending health care provider” means the physician, advanced practice registered nurse, or physician assistant, whether selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
- (4) “Decisional capacity” means the ability to provide informed consent to or refuse medical treatment or the ability to make an informed health care decision as determined by a health care provider experienced in this type of assessment.
- (5) “Health care facility” means a hospital, critical access hospital, or facility providing skilled nursing care as those terms are defined in 50-5-101.
- (6) “Health care provider” means any individual licensed or certified by the state to provide health care.
- (7) “Interested person” means a patient’s:
 - (a) spouse;
 - (b) parent;
 - (c) adult child, sibling, or grandchild; or
 - (d) close friend.
- (8) “Medical proxy decisionmaker” means a physician or advanced practice registered nurse designated by the attending health care provider.
- (9) “Physician” means an individual licensed pursuant to Title 37, chapter

3.

(10) “Physician assistant” means an individual licensed pursuant to Title 37, chapter 20, whose duties and delegation agreement authorizes the individual to undertake the activities allowed under [sections 1 through 8].

(11) (a) “Lay proxy decisionmaker” means an interested person selected pursuant to [sections 1 through 8] authorized to make medical decisions and discharge and transfer dispositions for a patient who lacks decisional capacity.

(b) The term does not include the patient’s attending health care provider.

Section 2. Determination of decisional capacity – use of proxy decisionmaker. (1) An attending health care provider may determine that an adult patient lacks decisional capacity related to medical treatment. The determination must be documented in the patient’s medical record.

(2) (a) The attending health care provider shall make specific findings related to the cause, nature, and projected duration of the patient’s lack of decisional capacity. The findings must be included in the patient’s medical record.

(b) Health care providers must use evidence-based methodologies for determining decisionmaking capacity. The method used to determine decisionmaking capacity may be selected in collaboration with a medical ethics committee.

(c) Patients with chronic cognitive disabilities may require assessment by health care providers familiar with the patient’s specific disability. If available, health care providers familiar with the patient’s chronic cognitive disability must be consulted to assess decisionmaking capacity.

(d) Patients for whom English is a second language must be assessed by a health care provider in the presence of an interpreter who is fluent in the patient’s primary language. Patients who communicate using American sign language must be assessed in the presence of an interpreter fluent in American sign language.

(3) A health care provider or health care facility may rely in good faith upon the medical treatment decision of a proxy decisionmaker selected or appointed in accordance with [sections 1 through 8] if an adult patient’s attending health care provider determines that the patient lacks decisional capacity and the patient does not have:

(a) a guardian with medical decisionmaking authority;

(b) an agent appointed in a medical durable power of attorney; or

(c) any other known person with the legal authority to provide consent or refusal of medical treatment on the patient’s behalf.

(4) Guardianship proceedings may be initiated by the health care facility in the absence of family or interested parties at the same time that a proxy decisionmaker is selected to meet the patient’s current decisional needs. If a guardian is appointed, the guardian shall assume the proxy decisionmaker role.

Section 3. Notification to interested persons – selection of proxy decisionmaker. (1) Upon a determination that an adult patient lacks decisional capacity, an attending health care provider or the provider’s designee shall make reasonable efforts to notify the patient of:

(a) the determination that the patient lacks decisional capacity; and

(b) the identity of a lay or medical proxy decisionmaker selected or appointed pursuant to [sections 1 through 8].

(2) An attending health care provider or the provider’s designee shall make reasonable efforts to locate and notify as many interested persons as practicable to inform them of the patient’s lack of decisional capacity and ask that a lay proxy decisionmaker be selected for the patient.

(3) The attending health care provider may rely on interested persons contacted by the provider or the provider's designee to notify other family members or interested persons.

(4) Interested persons who are informed of the patient's lack of decisional capacity shall make reasonable efforts to reach a consensus as to who among them will make medical treatment decisions on behalf of the patient. In selecting a lay proxy decisionmaker, the interested persons should consider which proposed decisionmaker:

(a) has a close relationship with the patient; and

(b) is most likely to have current knowledge of the patient's wishes regarding medical treatment.

(5) Nothing in this section precludes an interested person from initiating a guardianship proceeding for any reason at any time.

Section 4. Appointment of certain health care providers as medical proxy decisionmaker -- limitations -- termination. (1) An attending health care provider may designate another willing physician or advanced practice registered nurse to make health care treatment decisions as a patient's proxy decisionmaker if:

(a) after making reasonable efforts, the attending health care provider or the provider's designee is unable to locate any persons with authority to make medical decisions for the patient or no interested person with authority to make medical decisions for the patient is willing and able to serve as lay proxy decisionmaker;

(b) the attending health care provider has determined, with the assistance of any relevant specialists or interpreters, the patient's lack of decisional capacity;

(c) the attending health care provider's assessment of lack of decisional capacity has been confirmed by another health care provider;

(d) the attending health care provider or the provider's designee has consulted with and obtained a consensus on the proxy designation with the medical ethics committee of the health care facility where the patient is receiving care; and

(e) the identity of the physician or advanced practice registered nurse designated as proxy decisionmaker is documented in the medical record.

(2) For the purposes of subsection (1)(d), if the health care facility does not have a medical ethics committee, the facility may refer the attending health care provider or the provider's designee to a medical ethics committee at another health care facility or obtain consensus with the health care facility's chaplain.

(3) The authority of a physician or advanced practice registered nurse serving as a proxy decisionmaker terminates when:

(a) an interested person is willing to serve as a lay proxy decisionmaker;

(b) a family member is willing to serve as a decisionmaker;

(c) a guardian is appointed for the patient;

(d) the patient regains decisional capacity;

(e) the proxy decisionmaker decides to terminate the decisionmaker's role;

or

(f) the patient is transferred or discharged from the health care facility, if any, where the patient is receiving care unless the proxy decisionmaker expresses an intention to continue in the role.

(4) The attending health care provider shall document in the patient's medical record the reason for termination of the authority of a physician or advanced practice registered nurse serving as a proxy decisionmaker.

Section 5. Treatment guidelines when health care providers serve as proxy decisionmakers. (1) The attending health care provider and a health care provider appointed pursuant to [section 4] to serve as a medical proxy decisionmaker shall adhere to the following guidelines for proxy decisionmaking:

(a) for routine treatments and procedures that are low-risk and within broadly accepted standards of medical practice, the attending health care provider may make health care treatment decisions;

(b) for treatment involving anesthesia, invasive procedures, significant risk of complications, or otherwise requiring written, informed consent, the attending health care provider shall obtain the written consent of the medical proxy decisionmaker;

(c) for end-of-life treatment that is nonbeneficial and involves withholding or withdrawing specific medical treatments, the attending health care provider shall obtain:

(i) an independent concurring opinion from a physician or advanced practice registered nurse other than the medical proxy decisionmaker;

(ii) a consensus with the medical ethics committee, if available; and

(iii) a consensus with the health care facility's chaplain if a medical ethics committee is not available.

(2) Artificial nourishment and hydration may be withheld or withdrawn from a patient upon a decision of a physician or advanced practice registered nurse serving as a medical proxy decisionmaker only when the attending health care provider and an independent physician trained in neurology or neurosurgery certify in the patient's medical record that the provision or continuation of artificial nourishment or hydration cannot reasonably be expected to prolong life, would be excessively burdensome for the patient, or would cause the patient significant physical discomfort, such as from complications from the procedures used.

(3) (a) Nothing in [sections 1 through 8] may be construed as condoning, authorizing, or approving euthanasia or mercy killing.

(b) Nothing in [sections 1 through 8] may be construed as permitting an affirmative or deliberate act to end a person's life except to permit natural death.

(4) When a lay or medical proxy decisionmaker has not been appointed and the attending health care provider determines that a patient requires end-of-life treatment that includes artificial nourishment and hydration, before a lay or medical proxy decisionmaker may be appointed the attending health care provider or health care facility must petition the court to have a temporary guardian appointed as provided in 72-5-317. If the petition to have a temporary guardian appointed is not timely or successful considering the exigencies of the situation, a lay or medical proxy decisionmaker may be appointed.

Section 6. Medical ethics committee assistance in decisions on withholding or withdrawing treatment. The medical ethics committee of a health care facility shall assist a lay or medical proxy decisionmaker upon request if the lay or medical proxy decisionmaker is considering or has made a decision to withhold or withdraw medical treatment. If the health care facility treating the patient does not have a medical ethics committee, the facility may provide an outside referral for assistance or consultation.

Section 7. Redetermination of authority of lay or medical proxy decisionmaker. The attending health care provider of a patient for whom a lay or medical proxy decisionmaker has been named shall reexamine the patient and determine whether the patient has regained decisional capacity if

the patient or an interested person, guardian, attending health care provider, or the lay or medical proxy decisionmaker believes the patient has regained decisional capacity. The attending health care provider shall enter the determination and the basis for the determination into the patient's medical record and shall notify the patient, the lay or medical proxy decisionmaker, and the person who requested the redetermination of decisional capacity, if the request was made by someone other than the patient or proxy decisionmaker.

Section 8. Immunity. (1) An attending health care provider, provider's designee, or health care facility that makes a reasonable attempt to locate and communicate with a proxy decisionmaker is not subject to civil or criminal liability or regulatory sanction solely for the attempt to locate and communicate with the person.

(2) A member of a health care facility medical ethics committee is not subject to civil or criminal liability or regulatory sanction solely for taking part in decisions under [sections 1 through 8].

(3) A physician or advanced practice registered nurse acting in good faith as a proxy decisionmaker in accordance with [sections 4 and 5] is not subject to civil or criminal liability or regulatory sanction solely for acting as a medical proxy decisionmaker. An attending health care provider or the provider's designee remains responsible for negligent acts or omissions in providing care to a patient for whom a lay or medical proxy decisionmaker has been named.

(4) The immunity provided by this section does not apply to:

(a) a health care facility that is owned or operated by the state or a political subdivision of the state;

(b) members of a medical ethics committee for a health care facility that is owned or operated by the state or a political subdivision of the state; or

(c) health care providers who are employed by the state or a political subdivision of the state.

Section 9. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1 through 8].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 286

[SB 118]

AN ACT ADOPTING THE 2015 REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT; PROVIDING DEFINITIONS; PROVIDING USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS; PROVIDING PROCEDURE FOR DISCLOSURE OF DIGITAL ASSETS; PROVIDING FOR DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATION AND OTHER DIGITAL ASSETS OF CERTAIN USERS TO DESIGNATED RECIPIENTS AND FIDUCIARIES; PROVIDING FOR FIDUCIARY DUTIES AND AUTHORITY; PROVIDING FOR CUSTODIAN COMPLIANCE AND IMMUNITY; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 17] may be cited as the "Revised Uniform Fiduciary Access to Digital Assets Act".

Section 2. Definitions. As used in [sections 1 through 17]:

(1) “Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(3) “Carries” means engages in the transmission of an electronic communication.

(4) “Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) “Conservator” means a person appointed by a court to manage the estate of a living individual.

(6) “Content of an electronic communication” means information concerning the substance or meaning of the communication which:

(a) has been sent or received by a user;

(b) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(c) is not readily accessible to the public.

(7) “Court” means the district court having jurisdiction in matters relating to the content of [sections 1 through 17].

(8) “Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.

(10) “Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic communication” has the meaning set forth in 18 U.S.C. 2510(12), as amended.

(13) “Electronic-communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) “Fiduciary” means an original, additional, or successor personal representative, conservator, agent, or trustee.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(18) “Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than [sections 1 through 17].

(19) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(20) “Principal” means an individual who grants authority to an agent in a power of attorney.

(21) “Protected person” means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Remote-computing service” means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. 2510(14), as amended.

(24) “Terms-of-service agreement” means an agreement that controls the relationship between a user and a custodian.

(25) “Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(26) “User” means a person that has an account with a custodian.

(27) “Will” includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

Section 3. User direction for disclosure of digital assets. (1) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user’s digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under subsection (1) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user’s digital assets, including the content of electronic communications sent or received by the user.

(3) A user’s direction under subsection (1) or (2) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user’s assent to the terms of service.

Section 4. Terms-of-service agreement. (1) [Sections 1 through 17] do not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(2) [Sections 1 through 17] do not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary’s or designated recipient’s access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under [section 3].

Section 5. Procedure for disclosing digital assets. (1) When disclosing digital assets of a user under [sections 1 through 17], the custodian may at its sole discretion:

- (a) grant a fiduciary or designated recipient full access to the user’s account;
- (b) grant a fiduciary or designated recipient partial access to the user’s account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
- (c) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under [sections 1 through 17].

(3) A custodian need not disclose under [sections 1 through 17] a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under [sections 1 through 17] some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

- (a) a subset limited by date of the user's digital assets;
- (b) all of the user's digital assets to the fiduciary or designated recipient;
- (c) none of the user's digital assets; or
- (d) all of the user's digital assets to the court for review in camera.

Section 6. Disclosure of content of electronic communications of deceased user. If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a collection of personal property affidavit or court order;
- (4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and
- (5) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (b) evidence linking the account to the user; or
 - (c) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subsection (5)(a);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., as amended, 47 U.S.C. 222, as amended, or other applicable law;
 - (iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
 - (iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

Section 7. Disclosure of other digital assets of deceased user. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a collection of personal property affidavit or court order; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

- (b) evidence linking the account to the user;
- (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
- (d) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subsection (4)(a); or
 - (ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Section 8. Disclosure of content of electronic communications of principal. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (b) evidence linking the account to the principal.

Section 9. Disclosure of other digital assets of principal. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (b) evidence linking the account to the principal.

Section 10. Disclosure of digital assets held in trust when trustee is original user. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Section 11. Disclosure of contents of electronic communications held in trust when trustee not original user. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under 72-38-1013 that includes consent to disclosure of the content of electronic communications to the trustee;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 12. Disclosure of other digital assets held in trust when trustee not original user. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under 72-38-1013;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 13. Disclosure of digital assets to conservator of protected person. (1) After an opportunity for a hearing under 72-5-408, the court may grant a conservator access to the digital assets of a protected person.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(a) a written request for disclosure in physical or electronic form;

(b) a certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(c) if requested by the custodian:

(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(ii) evidence linking the account to the protected person.

(3) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

Section 14. Fiduciary duty and authority. (1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(a) the duty of care;

(b) the duty of loyalty; and

(c) the duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(a) except as otherwise provided in [section 5], is subject to the applicable terms of service;

(b) is subject to other applicable law, including copyright law;

(c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(d) may not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including 45-6-311.

(5) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(a) has the right to access the property and any digital asset stored in it; and

(b) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including 45-6-311.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(a) if the user is deceased, a certified copy of the death certificate of the user;

(b) a certified copy of the letter of appointment of the representative or a collection of personal property affidavit or court order, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(c) if requested by the custodian:

(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user; or

(iii) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subsection (7)(c)(i).

Section 15. Custodian compliance and immunity. (1) Not later than 60 days after receipt of the information required under [sections 6 through 14], a custodian shall comply with a request under [sections 1 through 17] from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under subsection (1) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. 2702, as amended.

(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under [sections 1 through 17].

(4) A custodian may deny a request under [sections 1 through 17] from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) [Sections 1 through 17] do not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under [sections 1 through 17] to obtain a court order which:

(a) specifies that an account belongs to the protected person or principal;

(b) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(c) contains a finding required by law other than [sections 1 through 17].

(6) (a) Except as provided in subsection (6)(b), a custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance [sections 1 through 17].

(b) The immunity in subsection (6)(a) does not apply to actions against the state or a political subdivision of the state.

Section 16. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 17. Relation to electronic signatures in global and national commerce act. [Sections 1 through 17] modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 18. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 72, chapter 31, and the provisions of Title 72, chapter 31, apply to [sections 1 through 17].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Retroactive applicability. (1) [Sections 1 through 17] apply retroactively, within the meaning of 1-2-109, to:

(a) a fiduciary acting under a will or power of attorney executed before, on, or after [the effective date of this act];

(b) a personal representative acting for a decedent who died before, on, or after [the effective date of this act];

(c) a conservatorship proceeding commenced before, on, or after [the effective date of this act]; and

(d) a trustee acting under a trust created before, on, or after [the effective date of this act].

(2) [Sections 1 through 17] apply to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(3) [Sections 1 through 17] do not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Approved May 4, 2017

CHAPTER NO. 287

[SB 119]

AN ACT GENERALLY REVISING HUNTING LICENSE LAWS; CLARIFYING WHICH HUNTING LICENSES ARE AVAILABLE TO CERTAIN NONRESIDENTS AT A DISCOUNTED PRICE; AUTHORIZING NONRESIDENT COLLEGE STUDENTS, NONRESIDENT YOUTH,

AND NONRESIDENT RELATIVES OF RESIDENTS TO PURCHASE A NONRESIDENT ELK-ONLY COMBINATION LICENSE; AUTHORIZING NONRESIDENT COLLEGE STUDENTS AND NONRESIDENT YOUTH TO PURCHASE A CLASS B-11 NONRESIDENT DEER COMBINATION LICENSE; RECLASSIFYING THE NONRESIDENT YOUTH BIG GAME COMBINATION LICENSE AS A CLASS B-10 LICENSE; REMOVING AN OBSOLETE REQUIREMENT FOR NONRESIDENT YOUTH TO PURCHASE A CLASS B-13 LICENSE AS A PREREQUISITE FOR A CLASS B-12 NONRESIDENT ELK B TAG; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 87-2-511, 87-2-514, 87-2-522, 87-2-525, AND 87-2-526, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-511, MCA, is amended to read:

“87-2-511. Sale and use of Class B-10; and Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant’s hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee of \$831.

(b) Subject to the statutory quota provided in 87-2-505, if the department determines all available elk-only combination licenses have sold by December 1 in any license year, the cost of the elk-only combination license must be adjusted for the subsequent license year based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount and applies to subsequent license years unless the conditions of this subsection are met.

(c) The department may retain 10% of the Class B-10 license fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(d) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

~~(7) Subject to 87-2-522(2), at the time of application, an applicant for a Class B-13 license shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth."~~

Section 2. Section 87-2-514, MCA, is amended to read:

"87-2-514. Nonresident relative of resident allowed to purchase nonresident licenses at reduced cost – definitions. (1) For the purposes of this section, the following definitions apply:

(a) "Nonresident relative of a resident" means a person born in Montana who is the natural or adoptive child, sibling, or parent of a resident but is not a resident.

(b) "Resident" means a resident as defined in 87-2-102.

(2) Except as otherwise provided in this chapter, a nonresident relative of a resident who meets the qualifications of subsection (5) may purchase the following at one-half the cost:

(a) a Class B nonresident fishing license;

(b) a Class B-1 nonresident upland game bird license;

(c) *one of the following:*

~~(i)~~ (i) a Class B-10 nonresident big game combination license; ~~and~~

(ii) a Class B-11 nonresident deer combination license; *or*

(iii) *a nonresident elk-only combination license;*

~~(d)~~ (d) *if available:*

(i) *a Class B-8 nonresident deer B tag;*

(ii) *a Class B-12 nonresident antlerless elk B tag license.*

(3) The nonresident relative of a resident shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 and a nonresident base hunting license as prescribed in 87-2-116 if the nonresident relative of a resident purchases a hunting license.

(4) Class B-10 and Class B-11 licenses sold pursuant to subsection (2) are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. *Nonresident*

elk-only combination licenses sold pursuant to subsection (2) are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.

(5) To qualify for a license pursuant to subsection (2), a nonresident relative of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana or documentation that the applicant was born to parents who were residents at the time of birth;

(b) evidence that the person previously held a Montana resident hunting or fishing license or has passed a hunter safety course in Montana pursuant to 87-2-105; and

(c) proof that the applicant is a nonresident relative of a resident.

(6) Of the fee paid for a hunting license purchased pursuant to subsection (2), 28.5% must be deposited in the account established in 87-1-290."

Section 3. Section 87-2-522, MCA, is amended to read:

"87-2-522. ~~Class B-13 nonresident Nonresident youth big game combination license licenses.~~ (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, and who is 12 years of age or older or will turn 12 years old before or during the season for which the license is issued and who is under 18 years of age may, upon payment of a fee of one-half of the cost of a regularly priced ~~Class B-10 nonresident big game combination~~ license and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office in Helena, Montana, to purchase: ~~a Class B-13 nonresident youth big game combination license~~

(a) *one of the following:*

(i) *a Class B-10 nonresident big game combination license;*

(ii) *a Class B-11 nonresident deer combination license; or*

(iii) *a nonresident elk-only combination license;*

(b) *if available:*

(i) *a Class B-8 nonresident deer B tag;*

(ii) *a Class B-12 nonresident antlerless elk B tag license.*

(2) ~~(a) The holder of a Class B-13 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license. When using a Class B-13 license issued pursuant to this section, the holder must be accompanied by an adult immediate family member who is the holder of a valid Class B-7, Class B-8, Class B-10, or Class B-11, Class B-12, or nonresident elk-only combination license or who is the holder of a valid resident deer or elk tag. As used in this subsection, an adult immediate family member means an applicant's natural or adoptive parent, grandparent, brother, or sister who is 18 years of age or older.~~

~~(b) An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth when applying for a license pursuant to this section.~~

~~(3) Class B-13 B-10 and Class B-11 licenses issued pursuant to this section are not included in the limit on the number of available Class B-10 and nonresident big game combination Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses issued pursuant to this section are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.~~

~~(4) The holder of a valid Class B-13 license may apply for a Class B-12 nonresident elk B tag license when authorized by the commission pursuant~~

to 87-2-104. The fee for a Class B-12 license is \$270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission.”

Section 4. Section 87-2-525, MCA, is amended to read:

“87-2-525. Class B-14 nonresident Nonresident college student big game combination license licenses. (1) A student who is not a resident, as defined in 87-2-102, and who meets the qualifications of subsection (2) may purchase a Class B-14 nonresident college student big game combination license *the following* for one-half of the cost of a Class B-10 nonresident big game combination license if that student:

(a) *one of the following:*

(i) *a Class B-10 nonresident big game combination license;*

(ii) *a Class B-11 nonresident deer combination license; or*

(iii) *a nonresident elk-only combination license;*

(b) *if available:*

(i) *a Class B-8 nonresident deer B tag;*

(ii) *a Class B-12 nonresident antlerless elk B tag license.*

(a)(2) *To qualify for a license pursuant to subsection (1), a student must:*

(a) *be is* currently enrolled as a full-time student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time; or

(b) (i) *has* have a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(ii) *has* have a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has a high school equivalency diploma issued in Montana; and

(iii) *is be* currently enrolled as a full-time student at a postsecondary educational institution in another state.

(2) ~~The holder of a Class B-14 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license.~~

(3) ~~Application for a Class B-14 nonresident college student big game combination license issued pursuant to this section may be made after the second Monday in September at any department regional office or at the department headquarters in Helena. To qualify, the applicant shall present a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.~~

(4) *Class B-10 and Class B-11 licenses issued pursuant to this section are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses issued pursuant to this section are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.”*

Section 5. Section 87-2-526, MCA, is amended to read:

“87-2-526. License for nonresident to hunt with resident sponsor or family member – use of license revenue. (1) The department may offer for sale 500 B-10 nonresident big game combination licenses, ~~and~~ 500 B-11 nonresident deer combination licenses, ~~and~~ 500 nonresident elk-only combination licenses that must be used as provided in this section and as authorized by department rules. Sale of licenses pursuant to this section does not affect the license quotas established for *Class B-10 and Class B-11 licenses* in 87-2-505 and 87-2-510 *or the number of nonresident elk-only combination licenses available pursuant to 87-2-511.* The price of licenses sold under this

subsection is one-half of the fee set for the equivalent license in 87-2-505, and 87-2-510, or 87-2-511.

(2) A license authorized in subsection (1) may be used only by an adult nonresident family member of a resident who sponsors the license application and who meets the qualifications of subsection (3). The nonresident family member must have completed a Montana hunter safety and education course or have previously purchased a resident hunting license. A nonresident family member who receives a license pursuant to subsection (1) must be accompanied in the field by a sponsor or family member who meets the qualifications of subsection (3).

(3) To qualify as a sponsor or family member who will accompany a nonresident licensed under subsection (1), a person must be a resident, as defined in 87-2-102, who is 18 years old or older and possesses a current resident hunting license and who is related to the nonresident within the second degree of kinship by blood or marriage. The second degree of kinship includes a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, and stepdaughter. The sponsor shall list on the license application the names of family members who are eligible to hunt with the nonresident hunter.

(4) If the department receives more applications for licenses than the number that are available under subsection (1), the department shall conduct a drawing for the licenses. Applicants who are unsuccessful in the drawing must be entered in the general drawing for a nonresident license provided under 87-2-505 or 87-2-510, as applicable.

(5) All money received from the sale of licenses under subsection (1) must be deposited in a separate account and must be used by the department to acquire public hunting access to inaccessible public land, which may include obtaining hunting access through private land to inaccessible public land.”

Section 6. Effective date. [This act] is effective March 1, 2018.

Approved May 4, 2017

CHAPTER NO. 288

[SB 120]

AN ACT REVISING PRACTICES FOR DENTAL HYGIENISTS; ALLOWING TOPICAL AGENT PRESCRIPTIONS BY DENTAL HYGIENISTS FOR FLUORIDE AGENTS, ORAL ANESTHETICS, AND NONSYSTEMIC ORAL ANTIMICROBIALS; REVISING DENTIST SUPERVISION REQUIREMENTS FOR THE ADMINISTRATION OF LOCAL ANESTHETICS BY DENTAL HYGIENISTS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-4-401 AND 37-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-401, MCA, is amended to read:

“37-4-401. Practice of dental hygiene – rulemaking. (1) (a) The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes *through rule*, and that may be performed under general supervision of a licensed dentist.

(b) The practice of dental hygiene also includes and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents ~~only~~ under the ~~direct~~ general supervision and authorization of a licensed dentist. ~~However, this section~~

(c) (i) *The practice of dental hygiene also includes prescriptive authority limited to fluoride agents, topical oral anesthetic agents, and nonsystemic oral antimicrobials that:*

(A) *are not controlled substances; and*

(B) *do not require a license by the federal drug enforcement agency.*

(ii) *Prescriptive authority under this section must be:*

(A) *done under the general supervision of a licensed dentist or by a dental hygienist practicing with a limited access permit under public health supervision;*

(B) *pursuant to rules adopted by the board; and*

(C) *in compliance with applicable laws concerning prescription packaging, labeling, and recordkeeping requirements.*

(iii) *The board shall determine by rule the education and competency requirements required for dental hygiene prescriptive authority.*

(iv) *The board shall determine by rule the percentage of fluoride, chlorhexidine gluconate, or any other active ingredients in any medication that may be prescribed by a dental hygienist under this section.*

(2) *Subsection (1) does not allow the board or a licensed dentist to delegate any of the following duties:*

(1)(a) *diagnosis, treatment planning, and prescription other than prescriptions authorized under subsection (1)(c);*

(2)(b) *surgical procedures on hard and soft tissues other than root planing and subgingival curettage;*

(3)(c) *restorative, prosthetic, orthodontic, and other procedures which that require the knowledge and skill of a dentist;*

(4)(d) *prescription for drugs or medications, other than those listed under subsection (1)(c); or*

(e) *work authorizations."*

Section 2. Section 37-4-405, MCA, is amended to read:

"37-4-405. Dental hygienist to practice under supervision of licensed dentist – exceptions – definitions. (1) A licensed dental hygienist may:

(a) with the permission of the supervising dentist, practice in the office of a licensed and actively practicing dentist under the general supervision of a licensed dentist; or

(b) provide dental hygiene preventative services in a public health facility under the general supervision of a licensed dentist or, subject to the provisions of subsection (4), under public health supervision.

(2) A dental hygienist may give instruction in oral hygiene without the direct supervision or general supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

(3) For the purposes of this section, the following definitions apply:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment, ~~except the administration of local anesthesia~~, by a licensed dental hygienist provided with the intent and

knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

(c) “public health facility” means:

(i) federally qualified health centers; federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b; nursing homes; extended care facilities; home health agencies; group homes for the elderly, disabled, and youth; head start programs; migrant worker facilities; local public health clinics and facilities; public institutions under the department of public health and human services; and mobile public health clinics; and

(ii) other public health facilities and programs identified by the board under subsection (6); and

(d) “public health supervision” means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

(4) (a) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services that include removal of deposits and stains from the surfaces of teeth, the application of topical fluoride, polishing restorations, root planing, placing of sealants, oral cancer screening, exposing radiographs, and charting of services provided, *and prescriptive authority as allowed under 37-4-401(1)(c)*.

(b) A licensed dental hygienist practicing under public health supervision may not provide dental hygiene preventative services that include local anesthesia, denture soft lines, temporary restorations, or any other service prohibited under 37-4-401.

(c) A licensed dental hygienist practicing under public health supervision shall provide:

(i) for the referral to a licensed dentist of any patient needing treatment outside the scope of practice authorized for a licensed dental hygienist under this subsection (4); and

(ii) treatment based upon medical and dental health guidelines adopted by rule by the board.

(5) (a) A dental hygienist practicing under public health supervision shall obtain a limited access permit from the board.

(b) The board shall adopt rules:

(i) defining the qualifications necessary to obtain a limited access permit; and

(ii) providing a process for obtaining a limited access permit.

(c) The provision of services under a limited access permit is limited to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care.

(6) The board may identify, by rule, other public health facilities and programs, in addition to those listed in subsection (3)(c), at which services under a limited access permit may be provided.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 289

[SB 138]

AN ACT REVISING INCOME TAX EXAMINATION AND COLLECTION LAWS; CREATING A TAXPAYER REFUND PROCEDURE FOR RECOVERY

OF A PAYMENT OF TAX AFTER EXPIRATION OF THE STATUTE OF LIMITATIONS FOR ASSESSMENT OF ADDITIONAL TAX; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2609 AND 15-31-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2609, MCA, is amended to read:

“15-30-2609. Credits and refunds – period of limitations. (1) If the department discovers from the examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) ~~(a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-2606 and 15-30-2607, the taxpayer files a claim or the department determines there has been an overpayment.~~ *A refund or credit may not be allowed or paid with respect to the year for which a return is filed after expiration of the period provided by 15-30-2606 and 15-30-2607 or after 1 year from the date of the overpayment or filing, whichever is later, unless before the expiration of the period the taxpayer files a claim for refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit.*

~~(b)~~(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 3 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding tax year. Interest does not accrue during any period for which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

- (i) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;
- (ii) the overpayment results from the carryback of a net operating loss; or
- (iii) the amount of interest is less than \$1.

(b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing in 15-30-2604, including any extension, interest is payable from the date the return was filed.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable.”

Section 2. Section 15-31-509, MCA, is amended to read:

“15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitation; or

(ii) until 1 year after the federal changes have become final or an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until 3 years after the federal changes become final or the amended federal return was filed, ~~whichever the case may be.~~

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or after ~~1 year~~ 1 year from the date of the overpayment ~~or filing~~, whichever period expires ~~the~~ is later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed ~~must~~ is automatically be extended.

(3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback.

(4) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back ~~will remain~~ remains open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section.”

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016.

Approved May 4, 2017

CHAPTER NO. 290

[SB 144]

AN ACT REVISING RESIDENTIAL LANDLORD AND TENANT LAWS; REVISING WHAT CONSTITUTES NOTICE TO INCLUDE THE RECEIPT BY TENANTS OR LANDLORDS OF INFORMATION BY ELECTRONIC MAIL; PROHIBITING THAT AN ELECTRONIC MAIL ADDRESS BE REQUIRED AS A CONDITION OF ENTERING INTO A RENTAL AGREEMENT; AMENDING SECTIONS 70-24-108 AND 70-24-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-108, MCA, is amended to read:

“70-24-108. What constitutes notice. (1) A person has notice of a fact if *any of the following is true:*

(a) the person has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) *in the case of a tenant or a landlord, it is transmitted to an electronic mail address provided by the tenant or the landlord in the rental agreement. Notice by electronic mail is complete on receipt of a read receipt generated by an electronic mail system or an electronic mail reply other than an automatically generated electronic mail reply.*

~~(c)(d)~~ (d) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the person at the place ~~held out~~ *indicated* by the person as the place for receipt of the communication or, in the absence of a designation, to the person’s last-known address. If notice is made with a certificate of mailing or by certified mail, service of the notice is considered to have been made ~~upon~~ *on* the date 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised reasonable diligence.”

Section 2. Section 70-24-202, MCA, is amended to read:

“70-24-202. Prohibited provisions in rental agreements. A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(3) agrees to the exculpation or limitation of liability resulting from the other party’s purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or ~~attorney’s~~ *attorney* fees connected ~~therewith~~ *with that liability*; or

(4) *must provide an electronic mail address as a condition of entering into the agreement. However, a party may voluntarily provide an electronic mail address if the agreement contains a provision allowing a party to elect to receive notice by electronic mail.*”

Section 3. Applicability. [This act] applies to rental agreements entered into, extended, or renewed on or after [the effective date of this act].

Approved May 4, 2017

CHAPTER NO. 291

[SB 158]

AN ACT DESIGNATING THE THIRD SATURDAY OF JUNE AS JUNETEENTH NATIONAL FREEDOM DAY IN ORDER TO COMMEMORATE AFRICAN-AMERICAN EMANCIPATION FROM SLAVERY.

WHEREAS, news of the end of slavery did not reach frontier areas of the United States, and in particular the southwestern states, for more than 2 years after President Lincoln's Emancipation Proclamation of January 1, 1863, and months after the conclusion of the Civil War; and

WHEREAS, on June 19, 1865, Union soldiers led by Major General Gordon Granger arrived in Galveston, Texas, with news that the Civil War had ended and that the enslaved were free; and

WHEREAS, African Americans who had been slaves in the Southwest celebrated June 19, commonly known as Juneteenth Independence Day, as the anniversary of their emancipation; and

WHEREAS, African Americans from the Southwest continue the tradition of Juneteenth Independence Day as inspiration and encouragement for future generations; and

WHEREAS, for more than 150 years, Juneteenth Independence Day celebrations have been held to honor African-American freedom while encouraging self-development and respect for all cultures; and

WHEREAS, although Juneteenth Independence Day is beginning to be recognized as a national and even global event, the history behind the celebration should not be forgotten; and

WHEREAS, the faith and strength of character demonstrated by former slaves remains an example for all people of the United States, regardless of background, religion, or race; and

WHEREAS, the character demonstrated by former slaves should inspire us in this country to give thanks for the freedom won by so many people in all nations cherishing liberty and to strive for the goals of bringing freedom and democracy to people of other countries no matter what their race or religion.

Be it enacted by the Legislature of the State of Montana:

Section 1. Juneteenth national freedom day. The third Saturday in June is designated as Juneteenth national freedom day to commemorate African-American emancipation from slavery, to celebrate the freedom won by people in many countries, and to rededicate ourselves to the cause of liberty.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved May 4, 2017

CHAPTER NO. 292

[SB 183]

AN ACT MAKING THE HUNTERS AGAINST HUNGER PROGRAM PERMANENT; EXTENDING RULEMAKING AUTHORITY; AND REPEALING SECTION 7, CHAPTER 83, LAWS OF 2013.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 7, Chapter 83, Laws of 2013, is repealed.

Approved May 4, 2017

CHAPTER NO. 293

[SB 187]

AN ACT PROHIBITING IMPORTATION OF ANIMAL CARCASSES FROM PLACES WITH DOCUMENTED OCCURRENCES OF CHRONIC WASTING DISEASES; ALLOWING EXCEPTIONS; PROVIDING A PENALTY; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Prohibition on carcass imports. (1) Except as provided in subsection (2), it is unlawful to transport into this state the whole carcass or certain carcass parts of white-tailed deer, mule deer, moose, or elk from states or provinces with documented occurrences of chronic wasting disease, as determined by the fish and wildlife commission, in wild populations or on private game farms.

(2) The following carcass parts may be transported into this state from the places described in subsection (1):

- (a) meat that is cut and wrapped or meat that is boned out;
- (b) quarters or other portions of meat with no part of the spinal column or head attached;
- (c) hides with no heads attached;
- (d) skull plates or antlers with no meat or tissue attached;
- (e) skulls that have been boiled and cleaned to remove flesh and tissue;
- (f) upper canine teeth; and
- (g) head, partial body, or whole body mounts prepared by a taxidermist.

(3) (a) Except as provided in subsection (3)(b), a person convicted of a violation of this section shall be fined up to \$500 or, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands as defined in 77-1-101 for recreational purposes for a period of time set by the court.

(b) Through January 31, 2019, a person who violates this section for the first time must be issued a warning and may not be fined. A person who commits a subsequent violation prior to January 31, 2019, is subject to the penalties provided in subsection (3)(a).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 6, part 4, and the provisions of Title 87, chapter 6, part 4, apply to [section 1].

Section 3. Effective date. [This act] is effective January 1, 2018.

Approved May 4, 2017

CHAPTER NO. 294

[SB 197]

AN ACT ENCOURAGING THE OFFICE OF PUBLIC INSTRUCTION TO UNDERTAKE EFFORTS TO PREVENT CHILD SEX TRAFFICKING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Child sex trafficking prevention. The office of public instruction is encouraged to undertake activities to educate Montanans about and prevent child sex trafficking. Activities may include but are not limited to:

- (1) reviewing best practices for preventing child sex trafficking;
- (2) providing access to educational resources for interested parents, teachers, child-care providers, and other community members on how to prevent child sex trafficking, on the warning signs of child sex trafficking, and on predatory behaviors;
- (3) coordinating educational and prevention efforts with law enforcement, the department of public health and human services, and local organizations that work to prevent child sex trafficking; and
- (4) supporting school districts in developing:
 - (a) policies on child sex trafficking awareness, prevention, response, and reporting; and
 - (b) educational materials and curricula aimed at preventing child sex trafficking.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 13, and the provisions of Title 20, chapter 7, part 13, apply to [section 1].

Approved May 4, 2017

CHAPTER NO. 295

[SB 200]

AN ACT REVISING LAWS RELATED TO THE DISPOSITION OF CERTAIN PROPERTY HELD BY LAW ENFORCEMENT AGENCIES; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH PROCEDURES TO ALLOW LOCAL LAW ENFORCEMENT TO DISPOSE OF FOUND OR ABANDONED PROPERTY; ALLOWING STATE AGENCIES THAT EMPLOY A PEACE OFFICER TO ADOPT RULES TO DISPOSE OF FOUND OR ABANDONED PROPERTY HELD BY THE AGENCY; REVISING PROCEDURES FOR DESTRUCTION OF PROPERTY HELD AS EVIDENCE BY A LAW ENFORCEMENT AGENCY FOR A CASE FILED IN A COURT OF LIMITED JURISDICTION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 46-5-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization to dispose of certain property in possession of local law enforcement. (1) The legislative body of a local government may, by ordinance or resolution, provide for the care, restitution, sale, donation, return, or destruction of unclaimed tangible personal property that may come into the possession of a peace officer or a law enforcement entity of the local government for which state law does not otherwise provide a procedure for disposition.

(2) At a minimum, the ordinance or resolution must provide:

(a) that unclaimed property valued at \$20 or more must be held by the local government for a period of at least 3 months;

(b) a process by which the local government shall attempt to notify the legal owner of unclaimed property held in its possession;

(c) a process by which the local government may allow a finder of unclaimed personal property to take possession of that property if it remains unclaimed;

(d) that unclaimed property will be destroyed as allowed or required by local, state, or federal law, returned to the finder, donated, or otherwise sold at public auction to the highest bidder;

(e) that, at least 10 days prior to the time fixed for the destruction, return, donation, or sale at public auction of unclaimed property, notice of the planned disposal must be given by publication one time in a newspaper of general circulation; and

(f) that, upon proof of legal ownership, the local government shall restore the unclaimed property to its legal owner.

(3) After property has been destroyed, returned, donated, or sold at public auction, the property or the value of the property is not redeemable by the owner or another person entitled to possession.

Section 2. Disposition of property held by state public safety officer – rulemaking. (1) A state agency that employs a public safety officer may adopt administrative rules to provide for the care, restitution, sale, donation, return, or destruction of unclaimed tangible personal property that may come into the possession of the agency or a public safety officer employed by the agency for which state law does not otherwise provide a procedure for disposition.

(2) At a minimum, the ordinance or resolution must provide:

(a) that unclaimed property valued at \$20 or more must be held by the state agency for a period of at least 3 months;

(b) a process by which the state agency shall attempt to notify the legal owner of unclaimed property held in its possession;

(c) a process by which the state agency may allow a finder of unclaimed personal property to take possession of that property if it remains unclaimed;

(d) that unclaimed property will be destroyed as allowed or required by local, state, or federal law, returned to the finder, donated, or otherwise sold at public auction to the highest bidder;

(e) that, at least 10 days prior to the time fixed for the destruction, return, donation, or sale at public auction of unclaimed property, notice of the planned disposal must be given by publication one time in a newspaper of general circulation; and

(f) that, upon proof of legal ownership, the state agency shall restore the unclaimed property to its legal owner.

(3) After property has been destroyed, returned, donated, or sold at public auction, the property or the value of the property is not redeemable by the owner or another person entitled to possession.

(4) For the purposes of this section, “public safety officer” has the meaning provided in 44-4-401.

Section 3. Section 46-5-307, MCA, is amended to read:

“46-5-307. Petition for destruction, disposal, or use of evidence. (1) ~~The~~ For a case filed in district court, the prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of the petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means any property that is unlawful to produce or possess;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of the effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition *required under subsection (1)* requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

(3) The ~~county attorney~~ *petitioner* shall provide a victim of the offense with a copy of the petition *required under subsection (1) at the victim's last known address* and shall advise the court whether the victim wishes to be heard on the petition. *It is the duty of the victim to provide the law enforcement agency, court, or prosecuting attorney's office with the victim's current contact information.*

(4) (a) *For a case filed in a court of limited jurisdiction, the owner of property seized in connection with a criminal charge must contact the prosecuting attorney's office within 6 months of the conclusion of the case, including appeal, to claim the property.*

(b) *An owner who fails to contact the prosecuting attorney's office within 6 months after the conclusion of the case surrenders the property to the seizing or holding agency and forfeits any right to the property.*

(c) *If an owner claiming property demonstrates proof of ownership and the prosecuting attorney determines the property is no longer needed for the prosecution of the case, the property must be returned to the claiming owner."*

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 8, part 1, and the provisions of Title 7, chapter 8, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 44, and the provisions of Title 44 apply to [section 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 296

[SB 207]

AN ACT REVISING LAWS RELATED TO THE CONFIDENTIALITY OF CERTAIN ARTIFACTS OR REMAINS ON LANDS OBTAINED FOR COMMON CARRIER PIPELINES; PROVIDING DEFINITIONS; AMENDING SECTION 75-20-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Confidentiality of cultural sites. (1) The location of any heritage properties or paleontological remains on or beneath land, rights-of-way, or easements obtained for a common carrier pipeline is confidential and may not be disclosed by the entity owning, operating, or managing any common carrier pipeline.

(2) The provisions of subsection (1) do not prohibit a person or entity from disclosing the location of heritage properties or paleontological remains to the department of environmental quality for purposes of reviewing an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20. The department may not disclose information regarding the location of heritage properties or paleontological remains to the public.

(3) For purposes of this section, the following definitions apply:

(a) "Heritage property" has the meaning provided in 22-3-421.

(b) "Paleontological remains" has the meaning provided in 22-3-421.

Section 2. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. (1) If the department determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) The department may require the applicant to post performance bonds to guarantee successful reclamation and revegetation of the project area.

(3) *For a common carrier pipeline as described in 69-13-101, the department shall condition a certificate to provide that for any land, rights-of-way, or easements, the location of any heritage properties or paleontological remains on or beneath land, rights-of-way, or easements for the common carrier pipeline is confidential and may not be disclosed.*

(4) *For purposes of this section, the following definitions apply:*

(a) *"Heritage property" has the meaning provided in 22-3-421.*

(b) *"Paleontological remains" has the meaning provided in 22-3-421."*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 13, part 1, and the provisions of Title 69, chapter 13, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to certificates issued under the Montana Major Facility Siting Act on or after [the effective date of this act].

Approved May 4, 2017

CHAPTER NO. 297

[SB 213]

AN ACT CLARIFYING THE DEPOSITS AND USES OF FEES IN THE SMITH RIVER CORRIDOR ENHANCEMENT ACCOUNT; AMENDING SECTION 23-2-409, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-409, MCA, is amended to read:

"23-2-409. Allocation of user fees – expenditure of Smith River corridor enhancement account. (1) All money collected as recreational and commercial user fees for floating and camping on the Smith River waterway pursuant to 23-2-408 must be deposited in the state treasury in ~~an~~ *the Smith*

River corridor enhancement account in the state special revenue fund to the credit of the department.

~~(2) Money deposited in the Smith River corridor enhancement account must be expended to:~~

(2) (a) *The following portions of recreational and commercial user fees deposited in the Smith River corridor enhancement account must be used for the purposes in subsection (2)(b):*

- (i) *\$50 of each commercial outfitter client fee;*
- (ii) *all revenue from the sale of super permit lottery chances; and*
- (iii) *5% of other float fee revenue, except for the nonrefundable permit application fee.*

(b) *The sum of the funds described in subsection (2)(a) must be expended to:*

~~(a)~~(i) *protect and enhance the integrity of the natural and scenic beauty of the Smith River waterway and its recreational, fisheries, and wildlife values through the lease or acquisition of property, including lease or acquisition of partial interests in property by the department within the Smith River corridor;*

~~(b)~~(ii) *pursue projects that serve to protect, enhance, and restore fisheries habitat, streambank stabilization, erosion control, and recreational values within the Smith River corridor, including Smith River tributaries; and*

~~(c)~~(iii) *pursue projects that serve to maintain and enhance instream flows for recognized recreational and aquatic ecosystem values in the Smith River corridor.*

(3) *All other funds in the Smith River corridor enhancement account may be used to manage, operate, and maintain the Smith River corridor."*

Section 2. Effective date. [This act] is effective July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 298

[SB 216]

AN ACT EXEMPTING STATE MEDICAL CARE SAVINGS ACCOUNTS AND FEDERAL HEALTH SAVINGS ACCOUNTS AND MEDICAL SAVINGS ACCOUNTS FROM BANKRUPTCY, CREDITOR, AND OTHER PROCESSES TO PAY DEBTS; AND AMENDING SECTIONS 15-61-202, 25-13-608, AND 31-2-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Medical care, health, or medical savings account – bankruptcy – exemption from attachment or garnishment. (1) An individual's medical care savings account under Title 15, chapter 61, a health savings account under 26 U.S.C. 223, or a medical savings account under 26 U.S.C. 220:

- (a) is exempt from creditor processes;
- (b) is not liable to attachment, garnishment, or similar legal processes; and
- (c) may not be seized, taken, appropriated, or applied by a legal or equitable process or by operation of law to pay a debt of liability of the individual or of a beneficiary on the account as provided in 72-6-223. This includes but is not limited to exemption from judgments under Title 25, chapter 13, and bankruptcy proceedings as provided under 31-2-106.

(2) This section applies to an individual's rights to hold or receive the assets of, income from, or funds paid into or out of a medical care savings account, health savings account, or medical savings account.

(3) This section does not apply to the extent that the bankruptcy, creditor, and other processes in subsection (1) relate to recovery of eligible medical expenses incurred by an individual from the individual's medical care savings account, health savings account, or medical savings account.

Section 2. Section 15-61-202, MCA, is amended to read:

“15-61-202. Tax exemption – conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-2110(2)(j), as long as the principal and interest or other income is contained within the account or withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder.

(2) An employee or account holder may exclude as an annual contribution in 1 year not more than \$3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-2131 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-2131 or exclude pursuant to 15-30-2110 an amount representing a loss in the value of an investment contained in an account.

(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed \$3,000. An employee or account holder who deposits more than \$3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-2110(2)(j) in a subsequent year any part of \$3,000 per year not previously excluded.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

~~(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account holder does not subject the employee or account holder to tax liability.~~

~~(8)~~(7) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223.”

Section 3. Section 25-13-608, MCA, is amended to read:

“25-13-608. Property exempt without limitation – exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans’ benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support;

(h) a burial plot for the judgment debtor and the debtor’s family;

(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004;

(j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706; **and**

(k) the judgment debtor’s interest in any unmatured life insurance contracts owned by the judgment debtor; *and*

(l) as provided in [section 1], a medical care savings account under Title 15, chapter 61, a health savings account under 26 U.S.C. 223, or a medical savings account under 26 U.S.C. 220 to the extent of contributions made before the suit resulting in judgment was filed and the earnings on those contributions.

(2) Veterans’ and social security legislation benefits based upon remuneration for employment, disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse.”

Section 4. Section 31-2-106, MCA, is amended to read:

“31-2-106. Exempt property – bankruptcy proceeding. An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) *Medical care, health, and medical savings accounts as provided in [section 1];*

~~(2)~~(3) the individual’s right to receive unemployment compensation and unemployment benefits; and

~~(3)~~(4) the individual’s right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within

1 year before the filing of the petition in bankruptcy that exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code, 26 U.S.C. 401(a), 403(a), 403(b), 408, or 409."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 25, chapter 13, part 6, and the provisions of Title 25, chapter 13, part 6, apply to [section 1].

Approved May 4, 2017

CHAPTER NO. 299

[SB 227]

AN ACT REVISING THE NUMBER OF DAYS A DISTRICT IS ENTITLED TO REIMBURSEMENT FOR SCHOOL TRANSPORTATION SERVICES; AMENDING SECTION 20-10-145, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-145, MCA, is amended to read:

"20-10-145. State transportation reimbursement. (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is one-half of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered; ~~not to exceed 180 pupil-instruction days to transport eligible transportees, as defined in 20-10-101, to or from school to participate in the minimum aggregate hours of instruction required pursuant to 20-1-301.~~ In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order

a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement.

(3) The superintendent of public instruction shall make the disbursement to each school district according to the following schedule:

(a) By September 1 of each year, the superintendent of public instruction shall make a payment equal to 50% of the state transportation reimbursement paid to the district in the previous school year.

(b) By March 31 of each year, the superintendent of public instruction shall make a payment to the district equal to the approved amount of state reimbursement for first semester transportation claims less the amount distributed to the district under subsection (3)(a).

(c) By June 30 of each year, the superintendent of public instruction shall make a payment to the district to pay the balance of the approved amount due to the district for first and second semester transportation.

(4) The payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.

(5) After adopting a budget amendment for the transportation fund in accordance with 20-9-161 through 20-9-166, the district shall send to the superintendent of public instruction a copy of each new or amended individual transportation contract and each new or amended bus route form to which the budget amendment applies. State reimbursement for the additional obligations must be paid as provided in subsection (1)."

Section 2. Effective date. [This act] is effective July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 300

[SB 240]

AN ACT GENERALLY REVISING LAWS RELATED TO LEGISLATOR BENEFITS; AMENDING SECTION 5-2-303, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-303, MCA, is amended to read:

"5-2-303. Participation in state benefits group -- employer contribution made to other plan. (1) Individual members of the senate and the house of representatives may enroll in the state employees benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect employee contributions directly from those legislators. The employer contribution must be paid from funds appropriated for that purpose.

(2) (a) If a member ~~does not enroll or terminates enrollment~~ *elects to waive coverage* under the state employees benefits group plan and is insured under a plan providing disability insurance, as defined in 33-1-207, *or is covered through a life insurance policy as defined in 33-1-208*, the department of administration, upon request of the member, shall pay to the ~~member's insurer~~ *member* an amount equal to the premium required to be paid by the member for coverage of the member and any dependents under the disability insurance plan *or life insurance policy*, subject to the limitation contained in subsection (2)(b) *less any required tax withholding*.

(b) A payment made under subsection (2)(a) may not exceed the amount of the employer contribution for group benefits for members of the legislature as provided for in 2-18-703.

(c) *To the extent allowed under federal law, a member may be reimbursed for premiums for:*

(i) *a plan offered as an individual major medical policy or a medicare supplement plan; or*

(ii) *coverage under medicare plans.*

(e)(d) Unused employer contributions must be transferred to an account as provided in 2-18-703 for a legislator who is a state employee and who has contributions paid for by another agency when the legislature is not in session.”

Section 2. Requirement to inform Montana’s congressional delegation. Upon passage and approval of [this act], the executive director of the legislative services division is directed to send copies of [this act] to Montana’s congressional delegation.

Section 3. Contingent effectiveness. (1) If the penalties for reimbursement of individual major medical policy or medicare supplement premiums under section 4980D of the Internal Revenue Code are repealed or amended to permit the state employees benefits group to allow reimbursement under [section 1(2)(c)(i)], then [section 1(2)(c)(i)] of this act is effective. The department of administration shall inform the code commissioner and certify when the penalties are repealed or amended and if the state employees benefits group may reimburse legislator members as provided in [section 1(2)(c)(i)].

(2) If the prohibition against financial and other incentives for reimbursement of medicare premiums under 42 CFR, part 411, subpart E, and 42 U.S.C. 1395y(b) is repealed or amended to permit the state employees benefits group to allow reimbursement under [section 1(2)(c)(ii)], then [section 1(2)(c)(ii)] of this act is effective. The department of administration shall inform the code commissioner and certify when the prohibition is repealed or amended and if the state employees benefits group may reimburse legislator members as provided in [section 1(2)(c)(ii)].

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1(2)(c)] is effective when the department of administration certifies to the code commissioner that either or both contingencies in [section 3] have occurred.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to any reimbursement legislators are entitled to beginning January 1, 2017.

Approved May 4, 2017

CHAPTER NO. 301

[SB 344]

AN ACT REVISING LAWS PERTAINING TO LIQUOR LICENSE FINANCING; PROVIDING THAT REGULATED LENDERS MAY USE LIQUOR LICENSES AS COLLATERAL; PROVIDING THAT LIQUOR LICENSE COLLATERAL IS ACCORDING TO THE SAME CREDIT TERMS AND STRUCTURE AS USED FOR ANY OTHER COMMERCIAL OR REAL ESTATE FINANCING TRANSACTION; PROVIDING FOR A FEE; AMENDING SECTIONS 16-4-801 AND 23-5-118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-801, MCA, is amended to read:

“16-4-801. Security interest in liquor license – definition. (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) “default” means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license;

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party’s interests in the license; or

(C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and

(ii) “liquor license” means a license issued under this chapter.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee’s obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee’s default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license. If the person holding the license places the license on nonuser status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of the notice of the default of the licensee.

(c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

(4) (a) A regulated lender, as defined in 31-1-111, may obtain a security interest in a liquor license ~~in order or in other assets of a business operating a liquor license~~ to secure a loan or a guaranty of a loan. ~~This section does not prohibit or limit the ability of a~~ A regulated lender ~~to~~ may use loan and security collateral documentation ~~and loan and collateral structure~~ consistent with that used by the regulated lender *in commercial loans* generally, and the

documentation and structure used by the lender does do not constitute control of the operation of the business or the licensee operating the business that is subject to the security interest create an undisclosed ownership interest in the liquor license or the licensee's business by a coborrower or guarantor if the department determines the borrower, coborrower, guarantor, and owner or owners of the assets pledged as collateral meet the requirements of 16-4-401. As used in this subsection (4), permissible loan and collateral structuring includes but is not limited to permitting owners and nonowners of a liquor license to:

(i) be coborrowers of a borrower's loan;

(ii) be guarantors of a borrower's loan, with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting from the guarantor; or

(iii) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan.

(b) A person claiming a security interest in a liquor license may submit to the department copies of documents evidencing the security interest, the license number, and a \$30 notification fee. The department shall deposit the fee as provided in 16-2-108. The department may create and provide a form to be used for this purpose.

(c) The department shall notify by certified mail those that have filed information provided in subsection (4)(b):

(i) at least 20 days prior to issuance of an order of default for revocation, nonrenewal, or lapse of a license; or

(ii) immediately after the department's office of dispute resolution has issued a decision to uphold the department's revocation or nonrenewal of a license under 16-4-406 or lapse of a license under 16-3-310.

(5) When a licensee is the borrower, an owner of the licensee may make a payment on the institutional loan. If a payment is made under this subsection (5):

(a) the party making the payment must be vetted and approved prior to making the payment;

(b) the licensee must notify the department within 90 days that the payment was made and designate whether the payment will be treated as a loan or an equity investment as follows:

(i) for a payment treated as a loan, the licensee must memorialize the loan by a written agreement, which must be provided to the department; or

(ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as a result, the licensee must follow department requirements for disclosing changes in ownership percentages; and

(c) the funds used for the payment must be the party's own funds or funds borrowed from an institutional lender.

(6) If a borrower, coborrower, or guarantor is not the licensee or an owner of the licensee, the coborrower or guarantor may make a payment on the institutional loan, and the payment does not create an undisclosed ownership interest in the liquor license by the borrower, coborrower, or guarantor only if:

(a) the licensee notifies the department within 90 days that the payment was made;

(b) the payment is made as a loan that is memorialized by a written agreement; and

(c) the funds used for the payment are the coborrower's or guarantor's own funds or funds borrowed from an institutional lender.

(7) A regulated lender that obtains a security interest in a liquor license or in other assets of a business operating a liquor license has no duty to ensure a coborrower's or guarantor's compliance with the requirements of subsection (5)

or (6) in connection with loan or guaranty payments it may receive from the coborrower or guarantor.

(8) For the purposes of subsections (5) and (6), the term "borrower" means the party that is primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid."

Section 2. Section 23-5-118, MCA, is amended to read:

"23-5-118. Transfer of ownership interest – definition. (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in the operation.

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation under the requirements of subsection (4) or to the transfer of less than 5% of the interest in a publicly traded corporation.

(4) A regulated lender, as defined in 31-1-111, may obtain a security interest in the assets of a licensed gambling operation to secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral documentation and loan and collateral structure consistent with that used by the regulated lender in commercial loans generally, and the documentation and structure used by the lender do not create an undisclosed ownership interest in the licensee's business by a coborrower or guarantor if the department determines the borrower, coborrower, guarantor, and owner or owners of the assets pledged as collateral meet the requirements of 23-5-176. As used in this subsection (4), permissible loan and collateral structuring includes but is not limited to permitting owners and nonowners of a licensed gambling operation to:

(a) be coborrowers of a borrower's loan;

(b) be guarantors of a borrower's loan, with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting from the guarantor; or

(c) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan.

(5) When a licensee is the borrower, an owner of the licensee may make a payment on the institutional loan. If a payment is made under this subsection (5):

(a) the licensee must notify the department within 90 days that the payment was made and designate whether the payment will be treated as a loan or an equity investment as follows:

(i) for a payment treated as a loan, the licensee must memorialize the loan by a written agreement, which must be provided to the department; or

(ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as a result, the licensee must follow department requirements for disclosing changes in ownership percentages; and

(b) the funds used for the payment must be the party's own funds or funds borrowed from an institutional lender.

(6) If a borrower, coborrower, or guarantor is not the licensee or an owner of the licensee, the coborrower or guarantor may make a payment on the institutional loan, and the payment does not create an undisclosed ownership in the licensee's business by the borrower, coborrower, or guarantor only if:

(a) the licensee notifies the department within 90 days that the payment was made;

(b) the payment is made as a loan that is memorialized by a written agreement; and

(c) *the funds used for the payment are the coborrower's or guarantor's own funds or funds borrowed from an institutional lender.*

(7) *A regulated lender that obtains a security interest in the assets of a licensed gambling operation has no duty to ensure a coborrower's or guarantor's compliance with the requirements of subsection (5) or (6) in connection with loan or guaranty payments it may receive from the coborrower or guarantor.*

(8) *For the purposes of subsections (5) and (6), the term "borrower" means the party that is primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid."*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 302

[SB 241]

AN ACT REVISING LAWS GOVERNING THIRD-PARTY COMMERCIAL DRIVER TESTING; ALLOWING THE DEPARTMENT OF JUSTICE TO CONTRACT WITH AND CERTIFY THIRD-PARTY COMMERCIAL DRIVER TESTING PROGRAMS OPERATED BY CERTAIN ENTITIES; REQUIRING THE THIRD-PARTY TESTING PROGRAM TO ADMINISTER THE SAME TESTS AS WOULD BE ADMINISTERED BY THE DEPARTMENT; REQUIRING THE DEPARTMENT TO ADOPT RULES GOVERNING THE CERTIFICATION AND MONITORING OF THIRD-PARTY TESTING PROGRAMS; REQUIRING THE RULES TO COMPLY WITH CERTAIN FEDERAL REGULATIONS; ALLOWING THE DEPARTMENT TO IMPOSE FEES FOR CERTIFICATION AND TESTING; AND AMENDING SECTIONS 61-5-112 AND 61-5-118, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses – classification – rulemaking – reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118; and

(h) allow for the issuance of a commercial learner's permit.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license because the vehicles are not considered commercial motor vehicles as provided in 61-1-101(9)(b)(ii)."

Section 2. Section 61-5-118, MCA, is amended to read:

"61-5-118. Third-party commercial driver testing program – certification of testing programs and examiners – rulemaking – fees – test waiver. (1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) has a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-112: contract with and certify the following as a third-party commercial driver testing program to administer the approved commercial driver skills test to a Montana commercial driver's license applicant:

(a) any person, employer of commercial drivers, private driver training facility, or other private company;

(b) a postsecondary institution as defined in 20-26-603;

(c) a department, agency, or instrumentality of a local government of the state; or

(d) a department, agency, or instrumentality of a tribal government of the state.

(2) A certified third-party driver testing program shall administer the same skills test as would otherwise be administered by the department.

(3) The department shall adopt rules governing the certification, operation, and monitoring of third-party testing programs. The rules must:

(a) substantially comply with the licensing standards and requirements in 49 CFR, part 383, and the state compliance standards in 49 CFR, part 384, including:

(i) issuance of a commercial driver's license skills testing certificate to a certified program upon execution of a third-party skills testing agreement;

(ii) requiring that all third-party skills test examiners meet minimum qualifications, including passing background checks paid for by the third-party testing program and successfully completing a formal skills test examiner training course;

(iii) providing examiner test limitations, minimum testing standards, and refresher training requirements; and

(iv) requiring recordkeeping and a detailed audit program that includes overt and covert test monitoring and onsite audits by state and federal personnel;

(b) specifically address the requirements for certifying third-party commercial driver testing programs, including place of business, appropriate bond and liability insurance, and facilities requirements; and

(c) specify minimum technology requirements for recordkeeping, scheduling applicants for the skills test, conducting the skills test, and electronically transferring skills test results to the department.

(4) The department may decertify a third-party commercial driver testing program for failure to comply with the department rules or federal regulations.

(5) The department may collect the following fees:

(a) a fee of \$5,000 to certify a third-party commercial driver testing program and a fee of \$2,500 for certification renewal;

(b) a fee of \$500 to certify each third-party commercial driver examiner and a fee of \$100 for certification renewal; and

(c) a fee of \$25 for each successfully completed skills test to be paid by the applicant.

(6) (a) A commercial driver's license applicant who is tested under the third-party commercial driver testing program must have passed the knowledge test required by 61-5-110 and complied with commercial driver's license department rules and federal regulations and must possess a valid Montana commercial learner's permit issued under 61-5-112.

(2)(b) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by:

(a)(i) a third-party commercial driver testing program certified under subsection (1) *this section*; or

(b)(ii) a third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program, as determined by the department.

(3) ~~An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal rules."~~

Approved May 4, 2017

CHAPTER NO. 303

[SB 242]

AN ACT ENCOURAGING CIVICS EDUCATION; ENCOURAGING HIGH SCHOOLS TO ADMINISTER A UNITED STATES CIVICS TEST TO STUDENTS; ENCOURAGING THE SUPERINTENDENT OF PUBLIC EDUCATION TO ACKNOWLEDGE HIGH SCHOOLS WHOSE STUDENTS ALL PASS THE CIVICS TEST; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Administration of United States civics test. (1) Each public high school in the state is encouraged to administer to each student, except as provided in subsection (2), at least once during a student's high school career, a United States civics test administered by the United States citizenship and immigration services to persons seeking to be naturalized citizens.

(2) A public high school may provide each student with the opportunity to take the test as many times as necessary for the student to pass the test. A student who has an individualized education program under which the civics test is determined to be an inappropriate requirement for the student may not be required to take the civics test.

(3) A student passes the civics test if the student correctly answers at least 70% of the questions.

(4) The superintendent of public instruction is encouraged to annually publish a list of high schools in the state whose seniors receiving a regular diploma, except for those exempted from taking the test under subsection (2), all pass the United States civics test under subsection (1) and recognize these schools as United States civics all-star schools for that school year.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 1].

Section 3. Effective date -- applicability. [This act] is effective July 1, 2017, and applies to school years beginning on or after July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 304

[SB 245]

AN ACT REVISING LAWS PERTAINING TO CAPTIVE INSURANCE COMPANIES; ALLOWING FOR INACTIVE CAPTIVE INSURANCE COMPANIES TO APPLY FOR DORMANT STATUS; PROVIDING DORMANT CAPTIVE INSURANCE FEES; PROVIDING DORMANT CAPTIVE INSURANCE REQUIREMENTS; AMENDING SECTIONS 33-2-705, 33-28-105, AND 33-28-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Dormant captive insurer. (1) As used in this section, unless the context requires otherwise, “dormant captive insurance company” means a captive insurance company, other than a captive risk retention group, that has:

(a) ceased transacting the business of insurance, including the issuance of insurance policies; and

(b) no remaining liabilities associated with insurance business transactions or insurance policies issued prior to the filing of its application for a certificate of dormancy under this section.

(2) A captive insurance company domiciled in Montana that meets the criteria of this section may apply to the commissioner for a certificate of dormancy. The certificate of dormancy is subject to expiration at the end of a consecutive 5-year period and may not be renewed.

(3) (a) A dormant captive insurance company that has been issued a certificate of dormancy shall:

(i) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000;

(ii) within 90 days of each fiscal year end, submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the commissioner; and

(iii) pay \$1,000 annual dormancy tax due on or before March 1 of each year for any portion of the preceding year in which the captive insurance company

held a certificate of dormancy. Each series of members as defined in 35-8-102 is considered separate pursuant to this section for purposes of paying the \$1,000 annual dormancy tax under a certificate of dormancy. A dormant captive insurance company is not otherwise liable for any annual renewal as provided in 33-28-102.

(b) A dormant captive insurance company that has been issued a certificate of dormancy may not:

- (i) be subject to or liable for the payment of any tax under 33-28-201;
- (ii) be subject to examinations as provided in 33-28-108.

(4) A dormant captive insurance company shall apply to the commissioner for approval to surrender its certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies.

(5) A certificate of dormancy must be revoked if a dormant captive insurance company no longer meets the criteria of this section.

Section 2. Section 33-2-705, MCA, is amended to read:

“33-2-705. Report on premiums and other consideration – tax. (1)

Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, “premium” includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) (a) Except as provided in ~~subsection~~ *subsections (2)(b) and (2)(c)*, coincident with the filing of the tax report referred to in subsection (1) and subject to 33-2-709, each insurer shall pay to the commissioner a tax on the net premiums computed at the rate of 2.75%.

(b) All casualty insurers issuing policies of legal professional liability insurance pursuant to 33-1-206 shall pay to the commissioner a tax on the net premiums derived from legal professional liability insurance computed at a rate of 0.75%.

(c) *A dormant captive insurer that has a valid certificate of dormancy shall pay to the commissioner an annual dormancy tax of \$1,000 as provided in [section 1].*

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report required by the commissioner for apportionment as provided by law.

When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section *or the annual dormancy tax under [section 1]* must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose on an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued.”

Section 3. Section 33-28-105, MCA, is amended to read:

“33-28-105. Formation of captive insurance companies. (1) A captive insurance company must be formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of its association or associations;

(c) organized as a reciprocal insurer under Title 33, chapter 5, *except that the requirements of 33-5-201(1) do not apply*; or

(d) organized as a limited liability company.

(3) A captive insurance company incorporated or organized in this state must be incorporated or organized by at least one incorporator or organizer who is a resident of this state.

(4) (a) In the case of a captive insurance company formed as a business entity and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers, directors, or managing members; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the organizational documents

and shall return the draft to the proposed organizers, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft organizational documents, the commissioner shall forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state. A captive risk retention group must have a minimum of five directors.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state. A captive risk retention group formed as a limited liability company must have a minimum of five managers.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state. A captive risk retention group formed as a reciprocal insurer must have a minimum of five members of the subscribers' advisory committee.

(7) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, *except 33-5-201(1)*, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) (a) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the authorization and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

Section 4. Section 33-28-108, MCA, is amended to read:

"33-28-108. Examinations and investigations. (1) (a) The commissioner or some competent person appointed by the commissioner shall examine the affairs, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable but no less frequently than every 5 years. *This section does not apply to a captive insurance company operating under a certificate of dormancy as provided in [section 1].*

(b) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Captive risk retention group reports produced pursuant to the examination requirements of this section are public records as defined in 2-6-1002.

(5) Except as provided in subsection (6), the provisions of this section apply to all business written by a captive insurance company.

(6) The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to the satisfaction of the commissioner.

(7) As a condition of authorization of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed.”

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 28, and the provisions of Title 33, chapter 28, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 305

[SB 254]

AN ACT PROVIDING IN STATUTE FEES FOR LICENSURE AS A RETAIL FOOD ESTABLISHMENT; AND AMENDING SECTION 50-50-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-205, MCA, is amended to read:

“50-50-205. License fee – late fee – preemption of local authority – exception. (1) (a) Except as provided in subsection (6) or (7), the department shall collect for each license issued or renewed a fee as provided in subsection (1)(b). Of the fees collected under this section, 90% must be deposited into the local board inspection fund account created in 50-2-108, 5% into the general fund, and 5% into the account provided for in 50-50-216.

(b) ~~The department shall set the fees by rule according to retail food establishment complexity~~ *License fees are:*

(i) *\$85 for each license issued to a retail food establishment that does not have more than two employees working at any one time; and*

(ii) *\$115 for retail food establishments other than those referred to in subsection (1)(b)(i).*

(2) (a) In addition to the license fee required under subsection (1), the department shall collect a late fee of \$25 from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee’s current license and who operates a retail food establishment governed by this part in the next licensing year.

(b) The late fee must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two inspections of the retail food establishment.

(4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108.

(5) The department shall collect a fee as provided in rule for each mobile food establishment plan submitted to the department for review.

(6) (a) A local health authority shall collect a fee, as provided in subsection (6)(b), for a permit issued for a temporary food establishment required to register under 50-50-120.

(b) A fee charged to a temporary food establishment may not exceed the amount charged to a retail food establishment as provided in subsection (1).

(c) The local regulatory authority shall use the revenue from the fee collected under this subsection (6) to defray costs associated with issuing a temporary food establishment permit and the costs of inspections required under this chapter.

(7) A fee may not be charged to a person who sells or serves whole shell eggs at a farmer's market if the whole shell eggs are clean, free of cracks, and stored in clean cartons that are labeled in accordance with department rules and kept at a temperature established by the department by rule."

Approved May 4, 2017

CHAPTER NO. 306

[SB 268]

AN ACT REVISING LAWS REGARDING TRANSPARENCY IN SETTLEMENTS; ALLOWING A PUBLIC EMPLOYEE OR RETIREE WHO IS A PARTY TO A SETTLEMENT TO WAIVE THE INDIVIDUAL RIGHT OF PRIVACY AND PERMIT OTHERWISE CONFIDENTIAL SETTLEMENT DOCUMENTS RELATED SOLELY TO THE EMPLOYEE TO BE RELEASED TO THE PUBLIC; AMENDING SECTIONS 2-9-303 AND 2-9-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-303, MCA, is amended to read:

"2-9-303. Compromise or settlement of claim against state. (1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

(3) *An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.*

Section 2. Section 2-9-304, MCA, is amended to read:

"2-9-304. Compromise or settlement of claim against political subdivision. (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

(3) *An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.*

Section 3. Compromise or settlement of claims by public employees regarding retirement service credits. A retiree from a public employer who is a party to a compromise or settlement regarding retirement service credits or benefits may waive the right of individual privacy and allow a governmental entity to release any or all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [section 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability – applicability. (1) For compromise or settlements entered into on or after July 1, 2010, until [the effective date of this act], [this act] applies retroactively, within the meaning of 1-2-109, unless the compromise or settlement contract provides that the records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally may not be released.

(2) [This act] applies without limitation to compromise or settlements entered into on or after [the effective date of this act].

Approved May 4, 2017

CHAPTER NO. 307

[SB 274]

AN ACT REVISING SPECIAL DISTRICT ELECTION LAWS; ALLOWING THE REFERENDUM ON THE CREATION OF A SPECIAL DISTRICT AND THE ELECTION OF THE BOARD OF A PROPOSED SPECIAL DISTRICT TO BE COMBINED; PROVIDING DEFAULT TERMS OF OFFICE FOR BOARD MEMBERS; AND AMENDING SECTIONS 7-1-201 AND 7-11-1021, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Combination of elections – term of board members if election combined. (1) (a) If the governing body orders a referendum on the creation of a proposed special district and the special district would be administered by an elected board, the governing body may combine the referendum on the formation of the district with the election of the members of the board so that the qualified electors of the district may vote on these matters on the same date and at the same time.

(b) If the elections are combined, the notice of the election must contain the names of the candidates. Candidates for the board must file a declaration of candidacy with the election administrator within the time period specified in

13-1-502. The election administrator shall endorse on the declaration the date on which it was presented.

(2) If the governing body orders a combined election pursuant to subsection (1) and unless otherwise provided by resolution by the governing body pursuant to 7-1-201:

(a) a board member elected pursuant to this section shall hold office until the election and qualification or the appointment and qualification of the member's successor.

(b) Except as provided in subsection (2)(c), a board member has a term of office of 4 years.

(c) (i) In a special district requiring the election of five directors, three of the initial directors shall serve for a term of 2 years and two of the initial directors shall serve for a term of 4 years.

(ii) In a special district requiring the election of three directors, one initial director shall serve for a term of 2 years and two initial directors shall serve for a term of 4 years.

(iii) At the first meeting following an initial election of board members, the board shall determine by lot who shall serve a 2-year term.

Section 2. Section 7-1-201, MCA, is amended to read:

"7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, Title 7, chapter 11, part 10, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:

(a) the number of administrative board, district board, or commission members;

(b) the terms of the members;

(c) whether members are entitled to mileage, per diem, expenses, and salary; and

(d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, a district board, or a commission may be assigned responsibility for a department or service district.

(b) An administrative board, a district board, or a commission may:

(i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law; and

(ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, a district board, or a commission must grant the administrative board, district board, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, a district board, or a commission may employ personnel to assist in its functions.

(3) (a) An administrative board, a district board, or a commission may be made elective.

(b) If an administrative board, a district board, or a commission is made elective, the election must be conducted as provided in Title 13, chapter 1, part 5.

(4) An administrative board, a district board, or a commission may not sue or be sued independently of the local government unless authorized by state law.

(5) (a) If administrative board, district board, or commission members are to be appointed, the members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

(b) The county commissioners shall maintain a register of appointments, including:

(i) the name of the administrative board, district board, or commission;

(ii) the date of appointment and confirmation, if any is required;

(iii) the length of term;

(iv) the name and term of the presiding officer and other officers of each administrative board, district board, or commission; and

(v) the date, time, and place of regularly scheduled meetings.

(c) Terms for members of elected or appointed boards or commissions may not exceed 4 years. Unless otherwise provided by resolution *or as provided in [section 1]*, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

(6) An administrative board, a district board, or a commission must consist of a minimum of 3 members and must have an odd number of members.

(7) The resolution creating an administrative board, a district board, or a commission may provide for voting or nonvoting *ex officio* members.

(8) Two or more local governments may provide for a joint administrative board, district board, or commission to be established by interlocal agreement.

(9) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting unless the resolution creating the board, district, or commission specifies otherwise.

(10) An administrative board, a district board, or a commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

(11) An administrative board, a district board, or a commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

(12) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, a district board, or a commission. The county commissioners may prescribe by resolution additional qualifications for membership.

(13) A person may be removed from an administrative board, a district board, or a commission for cause by the county commissioners or as provided by resolution.

(14) A resolution creating an administrative board, a district board, or a commission must contain, if applicable, budgeting and accounting requirements for which the administrative board, district board, or commission is accountable to the county commissioners.

(15) If a municipality creates a special district in accordance with Title 7, chapter 11, part 10, the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board.”

Section 3. Section 7-11-1021, MCA, is amended to read:

“7-11-1021. Governance – powers and duties. (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

(2) (a) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, *except as*

provided in [section 1], and specific powers and duties granted to the board and those specifically withheld must be stated.

(b) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body.

(c) The governing body has ultimate authority under this subsection (2).

(3) The entity chosen to administer the special district, as provided in subsection (1), may:

(a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;

(b) employ personnel directly related to the specific improvement or program;

(c) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;

(d) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;

(e) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;

(f) construct, improve, and maintain new or existing facilities and buildings necessary to accomplish the purposes of the special district;

(g) provide grants to private, nonprofit entities as part of implementing an effective program;

(h) adopt a seal and alter it at the entity's pleasure;

(i) administer local ordinances as appropriate;

(j) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and

(k) borrow money by the issuance of:

(i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

(ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

(4) If the special district is administered by a separate board, the board shall submit annual budget and work plans to the governing body for review and approval.

(5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 11, part 10, and the provisions of Title 7, chapter 11, part 10, apply to [section 1].

Approved May 4, 2017

CHAPTER NO. 308

[SB 278]

AN ACT PERMITTING LOCAL AGENCIES TO ENTER INTO A CONTRACT WITH FIRMS FOR CERTAIN PROFESSIONAL SERVICES ON AN AS-NEEDED BASIS AFTER EVALUATION OF QUALIFICATIONS;

INCREASING CONTRACT LIMITS FOR CONTRACTS BY DIRECT NEGOTIATION; AMENDING SECTIONS 18-8-204 AND 18-8-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-204, MCA, is amended to read:

“18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (i) the qualifications of professional personnel to be assigned to the project;
- (ii) capability to meet time and project budget requirements;
- (iii) location;
- (iv) present and projected workloads;
- (v) related experience on similar projects; and
- (vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) *After conducting an evaluation of firms pursuant to subsections (1) and (2)(b), a local agency may enter into a contract with one or more of those firms to provide architectural, engineering, or land surveying services on an as-needed basis for one or more projects and for a term to be mutually agreed to by the parties. Nothing in this subsection prevents a local agency from following the procurement procedures in this part for professional services for a particular project, unless a contract made pursuant to this subsection provides otherwise.*

(3)(4) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.”

Section 2. Section 18-8-212, MCA, is amended to read:

“18-8-212. Exception. (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed ~~\$20,000~~ \$50,000 may contract for those professional services by direct negotiation.

(2) *An Except as provided in 18-8-204(3), an agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.”*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 309

[SB 279]

AN ACT REQUIRING THE LEGISLATIVE SERVICES DIVISION TO OFFER TO PROVIDE A HISTORY OF THE SUBJECT MATTER REQUESTED IN A BILL DRAFT REQUEST.

Be it enacted by the Legislature of the State of Montana:

Section 1. Pre-drafting. (1) Prior to the legislative services division working on a bill draft request, the legislative services division shall offer to provide to the requesting legislator a brief history on the subject matter in the legislature in the past five sessions, including but not limited to:

(a) any legislation introduced in the past five sessions; and
(b) links to any online materials including bills, fiscal notes, audio or video files, and minutes.

(2) The legislative services division may request assistance from the legislative fiscal division or legislative audit division on any state budgetary, fiscal, or audit information related to the subject matter.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 4, part 1, and the provisions of Title 5, chapter 4, part 1, apply to [section 1].

Approved May 4, 2017

CHAPTER NO. 310

[SB 283]

AN ACT REVISING THE MONTANA RURAL PHYSICIAN INCENTIVE PROGRAM; INCREASING THE AMOUNT OF THE LOAN REPAYMENT AVAILABLE TO PHYSICIANS; AMENDING SECTION 20-26-1503, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-26-1503, MCA, is amended to read:

“20-26-1503. Use of incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account. (1) The state special revenue account established in 20-26-1501 is statutorily appropriated, as provided in 17-7-502, to the board of regents to be used to pay:

(a) the educational debts of physicians who practice in rural areas or medically underserved areas or for medically underserved populations of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents shall establish procedures for determining rural areas and medically underserved areas or populations of the state that qualify for assistance in physician recruitment. An eligible area or eligible population must demonstrate that a physician shortage exists or that the area or population has been unsuccessful in recruiting physicians in other ways.

(3) A physician from an area or serving a population determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-26-1502

must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area or serve the eligible population during the contract period.

(4) The maximum amount of educational debt payment that a physician practicing in a rural area or medically underserved area or for a medically underserved population may receive is ~~\$100,000~~ \$150,000 over a 5-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the state special revenue account established in 20-26-1501.”

Section 2. Effective date. [This act] is effective July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 311

[SB 284]

AN ACT REVISING THE MONTANA GREATER SAGE-GROUSE STEWARDSHIP ACT; REQUIRING PROJECTS TO IMPACT HABITAT AND POPULATIONS; REQUIRING CONSIDERATION OF APPLICABLE U.S. FISH AND WILDLIFE SERVICE POLICIES; AMENDING SECTIONS 76-22-104, 76-22-110, AND 76-22-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-22-104, MCA, is amended to read:

“76-22-104. Montana sage grouse oversight team – rulemaking.

The oversight team shall adopt rules to administer the provisions of this part, including:

(1) eligibility and evaluation criteria for grants distributed pursuant to 76-22-110 for projects that maintain, enhance, restore, expand, or benefit sage grouse habitat ~~or~~ *and* populations, including but not limited to requirements for matching funds and in-kind contributions and consideration of the socioeconomic impacts of a proposed project on the local community. The evaluation criteria must give greater priority to proposed projects that:

- (a) involve partnerships between public and private entities;
- (b) provide matching funds;
- (c) use the habitat quantification tool adopted pursuant to subsection (2);

and

(d) maximize the amount of credits generated per dollars of funds awarded.

(2) the designation of a habitat quantification tool, ~~subject to the approval of the~~ *in consideration of applicable* United States fish and wildlife service *sage grouse policies, state law, and any rules adopted pursuant to this part;*

(3) subject to the provisions of 76-22-105(2), a method to track and maintain the number of credits attributable to projects funded pursuant to this part that are available to a project developer to purchase for compensatory mitigation to offset debits under 76-22-111;

(4) methods of compensatory mitigation available under 76-22-111;

(5) review and monitoring of projects funded pursuant to this part;

(6) criteria for the acceptance or rejection of grants, gifts, transfers, bequests, and donations, including interests in real or personal property; and

(7) guidance on management options for any real property conveyed to the state under this part, including its sale or lease.”

Section 2. Section 76-22-110, MCA, is amended to read:

“76-22-110. Grants – eligibility. (1) Subject to the provisions of 76-22-112, to be eligible to receive funds pursuant to this part, a proposed project must maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people through voluntary, incentive-based efforts, including:

- (a) reduction of conifer encroachment;
- (b) reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;
- (c) maintenance, restoration, or improvement of sagebrush health or quality;
- (d) purchase or acquisition of leases, term conservation easements, or permanent conservation easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse populations;
- (e) incentives to reduce the conversion of grazing land to cropland;
- (f) restoration of cropland to grazing land;
- (g) modification of fire management to conserve sage grouse habitat ~~or~~ *and* populations;
- (h) demarcation of fences to reduce sage grouse collisions;
- (i) reduction of unnatural perching platforms for raptors;
- (j) reduction of unnatural safe havens for predators;
- ~~(k)~~(k) sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under 76-22-111;
- ~~(l)~~(l) establishment of a habitat exchange to develop and market credits consistent with the purposes of this part. The habitat exchange must be authorized by the United States fish and wildlife service and must use the habitat quantification tool to quantify and calculate the value of credits and debits. Funds may be allocated to a habitat exchange:

- (i) if the funds are used:
 - (A) to create and market credits in a manner consistent with the habitat quantification tool;
 - (B) for operational purposes, including monitoring the effectiveness of projects; or
 - (C) for costs associated with establishing the habitat exchange; and
- (ii) if the habitat exchange reimburses the state for its proportionate share of proceeds generated from the sale of credits created with funds distributed pursuant to this part. Any proceeds received by the state pursuant to this subsection ~~(1)(i)(ii)~~ ~~(1)(l)(ii)~~ must be deposited in the sage grouse stewardship account established in 76-22-109 and must be used only to acquire additional credits or for operational purposes, including monitoring the long-term effectiveness of compensatory mitigation projects.

~~(m)~~(m) other project proposals that the oversight team determines are consistent with the purposes of this part.

(2) Projects proposed by grant applicants may involve land owned by multiple landowners, including state and federal land, provided that the majority of the involved acres are privately held and that the proposed project benefits sage grouse across all of the land included in the project.

(3) Grants may be awarded only to organizations and agencies that hold and maintain conservation easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities approved by the oversight team.

(4) Grants may not be used to supplement or replace the operating budget of an agency or organization except for budget items that directly relate to the purposes of the grant.

(5) If a grant is awarded to a proposed project that uses matching funds from a source that prohibits the generation of credits for compensatory mitigation, the oversight team, when possible, shall allocate the credits generated by the proposed project on a pro rata basis and make available for compensatory mitigation under 76-22-111 only those credits attributable to funds awarded pursuant to this section and any unrestricted matching funds.”

Section 3. Section 76-22-111, MCA, is amended to read:

“76-22-111. Compensatory mitigation – findings. (1) The legislature finds that allowing a project developer to provide compensatory mitigation for the debits of a project is consistent with the purpose of incentivizing voluntary conservation measures for sage grouse habitat and populations. The project developer may provide compensatory mitigation by:

(a) using the habitat quantification tool to calculate the debits attributable to the project; and

(b) under a mitigation plan approved by the oversight team, offsetting those debits in whole or in part by:

(i) purchasing an equal number of credits from a habitat exchange authorized by the United States fish and wildlife service or from the available credits tracked by the oversight team pursuant to 76-22-104. Payments received for credits tracked by the oversight team must be deposited in the sage grouse stewardship account established in 76-22-109.

(ii) if sufficient conservation credits are unavailable for purchase, making a financial contribution to the sage grouse stewardship account established in 76-22-109 that is equal to the average cost of the credits that would otherwise be required;

(iii) providing funds to establish a habitat exchange or finance a conservation project for the purpose of creating credits to offset debits. However, the funds may not be used to subsidize mitigation by or decrease the mitigation obligations of any party involved in the project.

(iv) undertaking other mitigation options identified and approved by the oversight team, including but not limited to sage grouse habitat enhancement, participation in a conservation bank, or funding stand-alone mitigation actions.

(2) All mitigation undertaken pursuant to this section must be ~~consistent with the~~ *taken in consideration of applicable* United States fish and wildlife service’s ~~greater sage-grouse range-wide mitigation framework, service sage grouse policies,~~ state law, and any rules adopted pursuant to this part.

(3) A mitigation action taken under this section must be conducted within general habitat, core areas, or connectivity areas.”

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 312

[SB 285]

AN ACT ESTABLISHING THE MONTANA PULSE CROP COMMITTEE; ESTABLISHING MEMBERSHIP REQUIREMENTS; ESTABLISHING COMMITTEE DUTIES; PROVIDING FOR A PULSE CROP ASSESSMENT; CREATING A SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION AND AN APPROPRIATION; PROVIDING DEFINITIONS;

PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana pulse crop committee. (1) There is a Montana pulse crop committee.

(2) The committee consists of five voting members and three ex officio nonvoting members who are actively involved in the production, research, or marketing of pulse crops.

(3) The governor shall appoint:

(a) two members from an eastern district consisting of Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Valley, and Wibaux Counties;

(b) one member from a western district consisting of the remaining counties of the state; and

(c) two at-large members, who may be from either district.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university-Bozeman; and

(c) a representative of the pulse industry who is appointed by the governor and operates a collection facility that purchases pulses in Montana.

(5) (a) Agricultural groups with an interest in the production and marketing of pulses may submit to the governor a list of nominees for appointment not more than 90 days or less than 30 days before the expiration of a member's term.

(b) Appointments must be made from the individuals nominated. If too few individuals are nominated to fill the available positions, the governor may appoint any pulse producer from the district where the vacancy exists.

(6) The appointed members shall serve staggered terms of 3 years that expire on June 30. A member may not serve more than three consecutive 3-year terms.

(7) Each appointed member must be a Montana resident, derive a substantial portion of the member's income from growing pulse crops in the state, and have a farming operation in the district from which the member was appointed.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon written charges duly verified by the governor. The member must be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses on the member's behalf.

(9) A member who no longer resides in the state or in the district from which the member was appointed or who no longer grows pulse crops in the state or district is disqualified from membership, and the office becomes vacant. A member's refusal to recognize the member's disqualification is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as provided in 2-15-121.

Section 2. Definitions. As used in [sections 2 through 9], the following definitions apply:

(1) "Committee" means the Montana pulse crop committee provided for in [section 1].

(2) "Department" means the department of agriculture provided for in 2-15-3001.

(3) "Net receipts" means the net weight multiplied by the price paid to the producer.

(4) "Producer" means a person or landowner who is personally engaged in growing or producing pulse crops, a tenant of the landowner who is personally engaged in growing or producing pulse crops, or both the landowner and the tenant jointly. The term includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements.

(5) "Pulse crops" means dry peas, lentils, chickpeas, and fava beans.

Section 3. Pulse crop committee – officers – meetings – reimbursement. (1) The members of the committee shall elect a presiding officer from among the committee members. The presiding officer serves a 1-year term.

(2) The committee shall meet at least once a year and at other times as called by the presiding officer or by any three voting members of the committee.

(3) Committee members may not receive a salary but are entitled to compensation as provided in 2-15-122 for each day they are engaged in the transaction of official business. Members must be reimbursed as provided in 2-18-501 through 2-18-503 for travel expenses incurred while on official business.

Section 4. Powers of committee – administrative costs. (1) The committee:

(a) may plan and conduct a research program to improve the quality of pulse crops, develop and improve control measures for disease and pests that attack pulse crops, and disseminate information among the growers and dealers of the state;

(b) may plan and conduct a publicity and sales promotion campaign to increase the sale and use of Montana pulse crops;

(c) may cooperate with a local, state, or national organization or agency, whether voluntary or created by the law of a state or the United States government, engaged in similar work or activities to carry out a joint campaign of research, education, product protection, publicity, and reciprocal enforcement of the objectives of [sections 2 through 9];

(d) may enter into contracts and other agreements to carry out the purposes of this section;

(e) shall have final authority on the use and distribution of money from the pulse crop special revenue account provided for in [section 7];

(f) may provide, through the department, for the administration and enforcement of [sections 2 through 9];

(g) may recommend rules and orders to be adopted for the exercise of its powers and the performance of its duties, in accordance with the Montana Administrative Procedure Act;

(h) may authorize the purchase of office equipment or supplies and incur all other reasonable and necessary expenses and obligations required to carry out the provisions of [sections 2 through 9];

(i) may become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications; and

(j) may, in cooperation with the director of the department, establish and maintain the executive offices of the committee at any location in the state. The location may be changed at the discretion of the director and the committee.

(2) Funds used by the department for administering the program, including but not limited to personal service costs, operating costs, office and office equipment costs, and other administrative costs attributable to the program,

may not exceed 8% of the total amount of grants and contracts awarded from the pulse crop account provided for in [section 7] in the previous fiscal year.

Section 5. Pulse crop commodity assessment – collection. (1) There is an assessment on pulse crops as established by the committee by rule in accordance with this section.

(2) The assessment must be at least 1% and no more than 2% of the net receipts of pulse crops produced in Montana.

(3) The assessment shall occur at the time of first sale by a producer and must be collected by the first purchaser of the commodity from the producer. The amount must be assessed at the time of each settlement for the commodity purchased or by invoice form provided by the department.

(4) The department shall collect the assessment and deposit the revenue in the pulse crop special revenue account provided for in [section 7].

Section 6. Refund of assessment. (1) A producer who has paid assessments to the department may request that the department refund all or a portion of the assessment levied under the rules of the committee and paid by the producer. A refund request must be submitted in writing on an application form that is available without cost to all producers who pay assessments.

(2) The producer shall complete the refund application and return the application to the department, together with a record of the assessment collected, within 90 days after the date of the assessment or final settlement.

(3) If a refund request is not submitted to the department within the prescribed time period, the producer is presumed to have agreed to the assessment.

(4) A producer is not entitled to a refund under this section unless the refundable amount is \$5 or more.

Section 7. Pulse crop account – sources – use – expenditures. (1) There is a pulse crop account in the state special revenue fund to the credit of the department for use as provided in this section.

(2) The account consists of:

(a) proceeds from assessments collected pursuant to [section 5]; and

(b) gifts, grants, and donations to the department for research authorized under [sections 2 through 9].

(3) Money in the account must be used for the purposes of [sections 2 through 9] and is separate from all other accounts of the department.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of agriculture for use by the Montana pulse crop committee for the purposes of [sections 2 through 9]. Expenditures for administrative costs allowed under [section 4(2)] must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the pulse crop account.

Section 8. Department activities – bonding of employees – assessment of costs. (1) Department employees who handle assessments or other receipts must be bonded for the faithful and safe handling of and accounting for the receipts while in their hands and for faithful compliance with [sections 2 through 9].

(2) The committee may be assessed costs by the department for the services it provides on request or pursuant to 2-15-121. The costs charged must have a substantial relationship to the costs of services provided.

Section 9. Violation – penalty. A person violating a provision of [sections 2 through 9] is guilty of a misdemeanor and upon conviction shall be fined not less than \$25 or more than \$500.

Section 10. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations – definition – requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; [section 7]; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July

1, 2017; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023.”

Section 11. Appropriation. (1) There is appropriated from the special revenue account provided for in [section 7] to the department of agriculture \$200,000 in each year of the biennium beginning July 1, 2017, to pay for administrative costs associated with the activities of the Montana pulse crop committee as provided in [section 4(2)].

(2) The legislature intends that the appropriation in this section be considered a part of the ongoing base for the next legislative session.

Section 12. Transition – direction to governor and department.

(1) Members who were serving on the pulse crop advisory committee created pursuant to ARM 4.6.401 on February 8, 2017, shall serve as the voting members of the Montana pulse crop committee provided for in [section 1] for fiscal year 2018. The term of the ex officio member appointed by the governor begins as of the date of appointment.

(2) Ex officio members not appointed by the governor shall begin serving as of July 1, 2017.

(3) The governor shall appoint the members as required by [section 1] for terms beginning in fiscal year 2019.

(4) The department shall transfer on July 1, 2017, money collected through the pulse crop commodity assessment provided for in ARM 4.6.403, as well as money earned on the assessment or any gifts, grants, or other funds raised for pulse crop promotion and marketing, to the pulse crop account in the state special revenue fund provided for in [section 7].

Section 13. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 30, and the provisions of Title 2, chapter 15, part 30, apply to [section 1].

(2) [Sections 2 through 9] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 2 through 9].

Section 14. Effective date. [This act] is effective July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 313

[SB 286]

AN ACT REVISING LAWS REGARDING CONTRACTUAL RIGHTS TO ATTORNEY FEES; PROVIDING THAT A PARTY WITH CONDEMNATION AUTHORITY OVER PROPERTY OF A PRIVATE PARTY IS NOT ENTITLED TO RECOVER ATTORNEY FEES FROM THE LOSING PRIVATE PARTY WITH RESPECT TO THE ENFORCEMENT OF A CONTRACT OR OBLIGATION INVOLVING THE PRIVATE PARTY'S PROPERTY; AMENDING SECTION 28-3-704, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-3-704, MCA, is amended to read:

“28-3-704. Contractual right to attorney fees treated as reciprocal.

(1) ~~Whenever~~, *Except as provided in subsection (2), whenever*, by virtue of the provisions of any contract or obligation in the nature of a contract made and entered into at any time after July 1, 1971, one party to the contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right brings an action upon the contract or obligation, then in any action on the contract or obligation all parties to the contract or obligation are considered to have the same right to recover attorney fees and the prevailing party in any action, whether by virtue of the express contractual right or by virtue of this section, is entitled to recover reasonable attorney fees from the losing party or parties.

(2) *For a contract or obligation negotiated between a private party and a party with condemnation authority over the private party’s property, the party with condemnation authority is not entitled to recover attorney fees from the losing party or parties pursuant to subsection (1) in an action to enforce a contract or obligation involving the property.”*

Section 2. Applicability. [This act] applies to contracts or obligations between a private party and a party with condemnation authority over the private party’s property entered into on or after [the effective date of this act].

Approved May 4, 2017

CHAPTER NO. 314

[SB 291]

AN ACT REVISING DEFINITIONS RELATED TO MEDICAL LIEN LAWS AS APPLIED TO AMBULANCE SERVICES AND INSURERS; PROVIDING DEFINITIONS; AMENDING SECTION 71-3-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1113, MCA, is amended to read:

“71-3-1113. Definitions. As used in this part, the following definitions apply:

(1) *“Ambulance service” means a person providing ground or air ambulance transport, licensed under 50-6-306, that:*

(a) *is in-network with at least two insurers that together provide coverage for at least 25% of health insurance insureds in the state; or*

(b) *accepts insurance, including copayments, coinsurance, or deductibles, as payment in full and does not offer memberships under 50-6-320.*

~~(1)~~(2) *“Beneficiary” means a person entitled to insurance benefits.*

~~(2)~~(3) *“Dentist” means a person practicing dentistry as provided in 37-4-101.*

~~(3)~~(4) *“Insurance” means a contract through which a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.*

~~(4)~~(5) *“Insurer” includes a health service corporation has the meaning of a health insurance issuer provided in 33-22-140.*

~~(5)~~(6) *“Outpatient center for surgical services” means a facility registered as provided in 50-32-314.*

~~(6)~~(7) *“Person” means an individual, a corporation, an organization, or other legal entity.”*

Section 2. Coordination instruction. If both House Bill No. 73 and [this act] are passed and approved, then the reference in [this act] to 50-6-320 must be changed to "[sections 1 through 9 as provided in House Bill No. 73]".

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2017

CHAPTER NO. 315

[SB 292]

AN ACT REVISING DEBT REPORTING LAWS RELATED TO AMBULANCE BILLS; PROHIBITING REPORTS TO CONSUMER REPORTING AGENCIES OF UNTIMELY PAYMENTS ON BALANCE BILLS UNDER CERTAIN CIRCUMSTANCES; PROVIDING DEFINITIONS; PROVIDING A NOTIFICATION REQUIREMENT; AMENDING SECTION 50-6-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, individuals in a medical crisis that requires ambulance services may be faced with unexpectedly high bills with the potential to propel them into bankruptcy even after their insurance, if they have any, has paid on the ambulance bills; and

WHEREAS, individuals are responsible for paying ambulance bills with vendors they have selected themselves but often individuals in highly critical medical emergencies are unable to make the decisions on who is providing their ambulance service yet they still are expected to pay a bill over which they had no control.

Be it enacted by the Legislature of the State of Montana:

Section 1. Balance billing information – notification to ambulance companies – definitions. (1) (a) Subject to one of the conditions under subsection (1)(b), an ambulance service licensed in this state may not submit to a consumer reporting agency information intended to affect a patient's credit report because the patient has not made full payment of a bill for ambulance services.

(b) The prohibition under subsection (1)(a) is effective if:

(i) the patient's insurer or health plan has paid for the ambulance services based on the in-network or out-of-network charges outlined in the patient's insurance plan; or

(ii) an uninsured patient has paid toward the bill and filed with the attorney general's office a complaint regarding the bill as being an unfair trade practice because the bill is not based on usual and customary charges in the state.

(2) An ambulance service that transfers a bill to a collection agency shall state that the collection agency may not report as delinquent to a consumer reporting agency a bill covered by subsection (1).

(3) For the purposes of this section, the following definitions apply:

(a) "Ambulance service" means a person licensed under 50-6-306 who provides ground or air ambulance transport.

(b) "Consumer reporting agency" has the meaning provided in 30-14-1726.

(c) "Credit report" has the meaning provided in 30-14-1726.

(d) "Health plan" means the group insurance program authorized by Title 2, chapter 18, part 7, state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(e) “Insurance plan” has the meaning of “health insurance coverage” under 33-22-140.

(f) “Insurer” has the meaning of a health insurance issuer as provided in 33-22-140.

Section 2. Section 50-6-306, MCA, is amended to read:

“50-6-306. License required. (1) A person may not conduct or operate an emergency medical service without first obtaining a license from the department. A separate license is required for each type and level of service.

(2) Applications for a license must be made in writing to the department on forms specified by the department.

(3) Each license must be issued for a specific term not to exceed 2 years. Renewal may be obtained by paying the required license fee and demonstrating compliance with department rules.

(4) The license is not transferable.

(5) *The department shall notify an ambulance service at the time of licensing or licensing renewal of the reporting limitation of [section 1].*”

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to reports as of [the effective date of this act] of ambulance bills incurred for services provided in the state prior to [the effective date of this act] and paid in part to the extent of an insurance policy or for which a record exists of a complaint made to the insurance commissioner’s office prior to [the effective date of this act].

Approved May 4, 2017

CHAPTER NO. 316

[SB 299]

AN ACT REQUIRING PUBLIC DISCLOSURE OF FRACTURING FLUID INFORMATION IN OIL AND GAS OPERATIONS; ESTABLISHING INFORMATION TO BE DISCLOSED; ALLOWING AN OWNER, OPERATOR, OR SERVICE COMPANY TO REQUEST INFORMATION BE WITHHELD; DIRECTING THE ADMINISTRATOR OF THE BOARD OF OIL AND GAS CONSERVATION TO DETERMINE IF INFORMATION MAY BE WITHHELD; ESTABLISHING REQUIREMENTS TO REQUEST INFORMATION BE WITHHELD; ESTABLISHING A FEE; REQUIRING THE BOARD OF OIL AND GAS CONSERVATION TO AMEND ARM 36.22.608, 36.22.1015, AND 36.22.1016 RELATED TO DISCLOSURE OF FRACTURING FLUIDS; AND AMENDING SECTION 82-11-117, MCA.

WHEREAS, Board of Oil and Gas Conservation rules related to the disclosure of fracturing fluids are made redundant by passage of this bill; and

WHEREAS, ARM 36.22.608 contradicts the provisions of this bill because a description of the requirements for a proposed well stimulation do not conform to the requirements which would be reflected in law; and

WHEREAS, ARM 36.22.1015 contradicts the provisions of this bill because disclosure of well stimulation fluids do not conform to the requirements which would be reflected in law; and

WHEREAS, ARM 36.22.1016 contradicts the provisions of this bill because options for the protection of proprietary chemicals and trade secrets do not conform to the requirements which would be reflected in law.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings – purpose. The purpose of [sections 1 through 3] is to provide a fair process for disclosure of fracturing fluids to facilitate transparency, while protecting valuable trade secrets and allowing well owners, operators, and service companies to protect their right to obtain an advantage over competitors.

Section 2. Fracturing fluid disclosure – requirements. (1) The board of oil and gas conservation shall require the disclosure of fracturing fluids in accordance with [section 3] and this section.

(2) The fracturing fluid disclosure required by subsection (1) must include:

(a) except as provided in [section 3], the chemical compound name and the chemical abstracts service registry number of the ingredients, including any hazardous component listed on a material safety data sheet as defined in 50-78-102, the product name, and the type of additives used; and

(b) the proposed rate or concentration for each ingredient or additive, which may be expressed as percent by weight, percent by volume, parts per million, or parts per billion.

(3) Except as provided in [section 3(4)(b)], the administrator shall post the information submitted pursuant to subsection (2) to the board of oil and gas conservation's website or to a website established for education and disclosure of fracturing fluids hosted by a nonprofit organization dedicated to ground water protection with members consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or their successors.

(4) For the purposes of this part the following definitions apply:

(a) "Administrator" means the administrator of the division of oil and gas conservation.

(b) "Fracturing" means the introduction of fluid that may carry in suspension a propping agent under pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the well bore.

(c) "Systems approach" means the reporting of the identity of chemicals separately from the additive products they go into or the reporting of fracturing chemicals without attribution to the specific products in the fracturing fluid.

Section 3. Confidentiality request for trade secrets. (1) (a) If the owner or operator or service company providing fracturing services for a well believes that disclosing the complete composition of the fracturing fluid, including a specific ingredient's identity, concentrations, or both required in accordance with [section 2(2)], will, if disclosed, reveal information entitled to protection as trade secrets as defined in 30-14-402 that should be exempt from public disclosure, the owner, operator, or service company may request that the administrator withhold the information.

(b) When an owner, operator, or service company requests that information be withheld, the department shall charge a fee of no more than \$25 per ingredient or concentration for the request.

(2) To meet the requirement of subsection (1), the owner, operator, or service company shall provide the administrator with information demonstrating all of the following:

(a) that the ingredient identity, concentrations, or both, as appropriate, have not appeared in a public source or been publicly disclosed:

(i) pursuant to a federal or state law or regulation;

(ii) in a professional trade publication; or

(iii) through any other media or publication available to the public or competing oil and gas owners, operators, or service companies;

(b) to what extent the identity of the ingredient, its concentrations, or both, as appropriate, are known within a company and how the information is housed in the company and what steps employees, officers, agents, and directors take to prevent disclosure of the information;

(c) whether any other federal or state entity has determined that the ingredient identity, concentrations, or both, as appropriate, are not entitled to protection from public disclosure. A copy of the regulatory entity's determination, along with any explanation as to why the administrator should not make a similar determination, must be provided. Any information concerning prior requests for confidentiality that an owner, operator, or service company determines to be relevant also must be provided to the administrator;

(d) how the identity of the ingredient, its concentrations, or both, as appropriate, are commercially valuable to the owner, operator, or service company. A description of why the use of the ingredient, its concentrations, or both, as appropriate, is not common knowledge in the industry, including any novel or unusual aspects about the ingredient, must be provided.

(e) the ease or difficulty with which the complete composition of the fracturing fluid, including the ingredient identity, concentrations, or both, as appropriate, could be determined because of public disclosure. The information must explain why a systems approach format would not adequately protect a proprietary interest.

(3) An owner, operator, or service company shall provide the administrator with a description of the investigation completed by the owner, operator, or service company to meet the requirements of subsection (2).

(4) (a) Within 5 days of receiving the information provided in accordance with subsection (2), the administrator shall determine whether an owner, operator, or service company must disclose the ingredient identity, concentrations, or both, as appropriate.

(b) If the administrator determines disclosure of the ingredient identity, concentrations, or both, as appropriate, is not required, the administrator shall:

(i) post the information required in accordance with [section 2] to the board of oil and gas conservation's website or to a website hosted by a nonprofit organization dedicated to ground water protection with members consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or their successors and redact the specific information about the ingredient identity, concentrations, or both, as appropriate, that the administrator has determined may be withheld from public disclosure in accordance with this section;

(ii) make available to the public the chemical family name in lieu of a specific chemical compound name and number for any ingredient, concentration, or both, as appropriate, that is being withheld; and

(iii) maintain the unredacted version of the information in the board of oil and gas conservation's confidential files.

(5) If the administrator makes a determination in accordance with subsection (4)(b) that information must be withheld from public disclosure, the owner, operator, or service company shall every 3 years update the information required in accordance with subsection (2) to confirm that the ingredient

identity, concentrations, or both, as appropriate, have not been disclosed to the public in another forum.

(6) If an owner, operator, or service company disagrees with a determination by the administrator in accordance with subsections (1) through (5) that certain material will not be maintained as confidential, the owner, operator, or service company may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, operator, or service company wishes the information to enjoy confidential status. The board must be served in the action and may intervene as a party. Information submitted to the board or administrator by an owner, operator, or service company and contested in accordance with this subsection may only be publicly disclosed after a determination is made by a court of competent jurisdiction. Information submitted in accordance with [section 2] must be treated in accordance with [sections 1 and 2] and this section.

Section 4. Board to amend rules. The board of oil and gas conservation shall amend ARM 36.22.608, 36.22.1015, and 36.22.1016 as needed to comply with the requirements of [sections 1 through 3].

Section 5. Section 82-11-117, MCA, is amended to read:

“82-11-117. Confidentiality of records. (1) ~~Any~~ *Except as provided in subsection (4), any* information that is furnished to the board or the board’s staff or that is obtained by either of them is a matter of public record and open to public use. ~~However, any~~ *Except as provided in subsection (4),* information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner, ~~or operator, or service company~~ disagrees with a determination by the board *in accordance with this section or by the administrator in accordance with [sections 1 through 3]* that certain material will not be maintained as confidential, the owner, ~~or operator, or service company~~ may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, ~~or operator, or service company~~ wishes the information to enjoy confidential status. The ~~department~~ board must be served in the action and may intervene as a party. *Information submitted to the board or administrator by an owner, operator, or service company and contested in accordance with this subsection may only be publicly disclosed after a determination is made by a court of competent jurisdiction.*

(3) Any information not intended to be public when submitted to the board or the board’s staff must be submitted in writing and clearly marked as confidential.

(4) *Information submitted in accordance with [section 2] must be treated in accordance with [sections 1 through 3].*

~~(4)~~(5) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters *under this chapter or [sections 1 through 3]* may not be considered confidential.

~~(5)~~(6) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section.”

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 82, chapter 10, part 1, and the provisions of Title 82, chapter 10, part 1, apply to [sections 1 through 3].

Approved May 4, 2017

CHAPTER NO. 317

[SB 315]

AN ACT REVISING LAWS RELATED TO THE CLEANUP OF THE LIBBY ASBESTOS SUPERFUND SITE; CREATING AN ADVISORY TEAM; CREATING A TRUST FUND AND AN OPERATION AND MAINTENANCE ACCOUNT; CREATING A LIAISON; ESTABLISHING DUTIES AND FUNDING; PROVIDING FUND TRANSFERS AND APPROPRIATIONS; REQUIRING REPORTING; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Libby asbestos superfund advisory team -- duties. (1) There is a Libby asbestos superfund advisory team. The advisory team is attached to the department of environmental quality for administrative purposes only, as prescribed in 2-15-121.

(2) The advisory team consists of:

(a) the director of the department of environmental quality or the director's designated representative;

(b) a Lincoln County commissioner designated by the commission;

(c) a citizen of Lincoln County nominated by the Lincoln County commission and selected by the governor;

(d) one member of the house of representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the house; and

(e) one member of the senate whose district includes at least a portion of Lincoln County appointed by the senate president.

(3) The advisory team shall select a presiding officer.

(4) The advisory team shall meet at least quarterly to fulfill the requirements of this section.

(5) Duties of the advisory team include to:

(a) advise the department of environmental quality regarding the administration of the Libby asbestos cleanup trust fund provided for in [section 3];

(b) advise the department of environmental quality regarding the administration of the Libby asbestos cleanup operation and maintenance account provided for in [section 4]; and

(c) recommend tasks and work priorities for the Libby asbestos superfund liaison.

(6) Unless otherwise provided by law, each member is entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while performing advisory team duties.

Section 2. Libby asbestos superfund liaison. (1) There is a Libby asbestos superfund liaison who is an employee of the department of environmental quality but serves as staff to the Libby asbestos superfund advisory team created by [section 1].

(2) The Lincoln County commission shall nominate three candidates for the liaison position. The governor shall select the liaison from those candidates. The liaison reports to the director of the department of environmental quality or the director's designated representative.

(3) The liaison shall represent the interests of Lincoln County and the state by assisting the department of environmental quality in dealing with federal agencies related to the Libby asbestos superfund site. In carrying out these duties, the liaison shall:

- (a) monitor activities related to the Libby asbestos superfund site;
 - (b) assist in the implementation of final cleanup plans for the Libby asbestos superfund site;
 - (c) review documents and provide comments and recommendations to the department and, at the department's request, to local governments and appropriate federal agencies regarding the Libby asbestos superfund site;
 - (d) assist in the preparation and dissemination of reports and other information as necessary; and
 - (e) other duties as assigned by the director of the department of environmental quality or the director's designated representative.
- (4) The liaison shall submit a report to the environmental quality council by July 1 of each year.

Section 3. Libby asbestos cleanup trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of cleanup and long-term operation and maintenance at the Libby asbestos superfund site.

- (2) The fund is financed with:
- (a) 20% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant to 75-10-704;
 - (b) any funds remaining at the end of each fiscal year in the Libby asbestos cleanup operation and maintenance account provided for in [section 4]; and
 - (c) other sources of funding that the legislature or congress may from time to time provide.
- (3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2028.
- (4) The annual earnings on the fund for the year 2029 and for each succeeding year may be appropriated for the purposes of subsection (1).
- (5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may be made only for payment of the costs of cleanup and long-term operation and maintenance costs.

Section 4. Libby asbestos cleanup operation and maintenance account. (1) There is a Libby asbestos cleanup operation and maintenance account in the state special revenue fund established in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used for:

- (a) cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site; and
 - (b) administrative costs for the Libby asbestos superfund advisory team and the Libby asbestos superfund liaison, not to exceed 25% of the annual appropriation.
- (2) The following funds must be deposited in the account:
- (a) 80% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant to 75-10-704;
 - (b) money received by the department of environmental quality in the form of grants, gifts, transfers, bequests, and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and
 - (c) any interest or income earned on the account.
- (3) Any unspent or unencumbered money in the account at the end of a fiscal year must be transferred to the Libby asbestos cleanup trust fund.

Section 5. Section 75-10-704, MCA, is amended to read:

“75-10-704. Environmental quality protection fund. (1) Subject to legislative fund transfers, there is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds allocated to the fund by the legislature;

(d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;

(e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(f) funds received from the interest income of the fund;

(g) funds received from settlements pursuant to 75-10-719(7);

(h) funds received from the interest paid pursuant to 75-10-722; and

(i) funds transferred from the orphan share account pursuant to 75-10-743(10). The full amount of these funds must be dedicated each fiscal year as follows:

(i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site *and allocated pursuant to [sections 3 and 4];* and

(ii) 50% to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371. This subsection (4)(i)(ii) does not apply to exploration or mining work performed after March 9, 1971. Projects funded under this subsection (4)(i)(ii) are not subject to the requirements of Title 75, chapter 10, part 7.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action. (Subsection (4)(i) terminates June 30, 2027--sec. 5, Ch. 387, L. 2015.)”

Section 6. Transfer of funds. The department of environmental quality is authorized to transfer money as required in [sections 3 and 4].

Section 7. Appropriations. There is appropriated to the department of environmental quality in each of the fiscal years 2018 and 2019:

(1) \$120,000 from the Libby asbestos cleanup trust fund for the purposes of [section 3]; and

(2) \$480,000 from the Libby asbestos cleanup operation and maintenance account for the purposes of [section 4].

Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 4].

Section 9. Effective date. [This act] is effective July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 318

[SB 321]

AN ACT REVISING LAWS RELATED TO CADAVERS; ALLOWING A LICENSED PHYSICIAN OR PODIATRIST TO PROCURE A CADAVER SPECIMEN FROM A NATIONALLY ACCREDITED NONTRANSPLANT ANATOMIC BANK FOR ANATOMIC DISSECTION AND SURGICAL DEMONSTRATION AND TRAINING; AND AMENDING SECTIONS 50-21-101, 50-21-102, AND 50-21-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-21-101, MCA, is amended to read:

“50-21-101. Procurement of cadavers. (1) ~~Any~~ A medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

(2) *A physician or podiatrist licensed in the state of Montana may procure a cadaver specimen from a nationally accredited nontransplant anatomic bank for the purposes of anatomic dissection and surgical demonstration and training.*”

Section 2. Section 50-21-102, MCA, is amended to read:

“50-21-102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) ~~The~~ A medical school shall apply to the person or organization that has custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of public health and human services showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body must be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit must accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that the deceased's body be buried immediately, the person or organization that has custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

(8) *A licensed physician or podiatrist shall contract with a nationally accredited nontransplant anatomic bank for the delivery and disposal of an anatomic specimen for the purposes of conducting anatomical dissection or surgical demonstration and training. The specimen must be delivered to a hospital or surgical center licensed by the state.*”

Section 3. Section 50-21-103, MCA, is amended to read:

“50-21-103. Limitations on right to perform autopsy or dissection.

The right to perform an autopsy, dissect a human body, *conduct surgical demonstration or training on a human body*, or make any postmortem examination involving dissection of any part of a body is limited to cases in which:

- (1) *which are* specifically authorized by law;
- (2) *in which* a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;
- (3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;
- (4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent authorized;
- (5) *in which* the decedent died in a hospital operated by the United States department of veterans affairs, Montana school for the deaf and blind, or an institution in the department of corrections or the department of public health and human services, leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;
- (6) *in which* the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.”

Approved May 4, 2017

CHAPTER NO. 319

[SB 325]

AN ACT PROVIDING CERTAIN LEGAL PROTECTIONS FOR PRIVATE EMPLOYERS REGARDING EMPLOYMENT OF INDIVIDUALS WITH CRIMINAL BACKGROUNDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legal protections in relation to employing individuals with criminal records. A private employer who acts reasonably and complies in good faith with this section may not be held liable regarding claims of negligent hiring or negligent employment for acts committed by an employee with a criminal record if the acts are committed outside the scope of the employment and:

- (1) the employer reviewed an arrest record prior to hiring that did not show a disposition of the case or that indicated an acquittal or a dismissal;
- (2) the conviction was for:
 - (a) a misdemeanor offense; or
 - (b) an offense that was not related to the employment; or
- (3) the employee with a criminal record is under the supervision of the probation and parole division of the department of corrections and the employment has been approved by the supervising officer.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2017.

Approved May 4, 2017

CHAPTER NO. 320

[SB 339]

AN ACT ESTABLISHING THE COAL-FIRED GENERATING UNIT REMEDIATION ACT; PROVIDING FINDINGS AND INTENT; DEFINING TERMS; ESTABLISHING REQUIREMENTS FOR SUBMISSION, REVIEW, AND APPROVAL OF A REMEDIATION PLAN; ALLOWING THE DEPARTMENT TO RECOVER ADMINISTRATIVE COSTS; ESTABLISHING THE DEGREE OF REMEDIATION REQUIRED; ESTABLISHING AN APPEALS PROCESS FOR A PERSON WHOSE INTERESTS ARE ADVERSELY AFFECTED BY A FINAL DECISION OF THE DEPARTMENT TO APPROVE OR MODIFY A PLAN; ESTABLISHING VENUE FOR A CHALLENGE TO A PLAN; ESTABLISHING AN APPEAL PROCESS FOR AN OWNER OR PERSON CHALLENGING AN ENFORCEMENT ACTION OR ORDER; ESTABLISHING VENUE AND A STANDARD OF REVIEW FOR A CHALLENGE TO THE ACTION OR ORDER; PROVIDING FOR ENFORCEMENT OF A PLAN; AMENDING SECTIONS 75-1-1001 AND 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the “Coal-Fired Generating Unit Remediation Act”.

Section 2. Findings – intent. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Coal-Fired Generating Unit Remediation Act.

(2) It is the legislature’s intent that the requirements of [sections 1 through 9] ensure that appropriate remedies are in place when a coal-fired generating unit is retired to ensure the protection of the environmental life support systems from degradation and to provide adequate remedies to prevent unreasonable degradation of natural resources.

Section 3. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) (a) “Affected property” means the property owned by or under the control of an owner that is affected by a coal-fired generating unit, including:

(i) land, surface water, or ground water directly affected by the coal-fired generating unit, associated impoundments, disposal and waste operations, buildings, structures, or other improvements or operations infrastructure; and

(ii) areas affected by activities necessary to the closure and dismantling of the coal-fired generating unit.

(b) The term does not include:

(i) land, water, or air affected or potentially affected by emissions from the operation of a coal-fired generating unit; or

(ii) the mining of coal at an underground or strip mine and used at the coal-fired generating unit.

(2) “Applicable legal obligations” means any applicable state or federal environmental laws, including but not limited to the Montana Water Quality Act, rules regarding disposal of coal combustion residuals from electric utilities,

the Montana Major Facility Siting Act, and other applicable laws administered by the department in accordance with Title 75. The term includes any consent order or settlement entered into by the department and an operator or owner imposing obligations to undertake remediation actions at the coal-fired generating unit or affected property.

(3) “Coal-fired generating unit” means an individual unit of a coal-fired electrical generating facility located in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts.

(4) “Department” means the department of environmental quality provided for in 2-15-3501.

(5) “Operator” means the person engaged in operating or undertaking remediation actions at a coal-fired generating unit. An operator may or may not be an owner.

(6) “Owner” means a person who has a legal or equitable interest in property subject to [sections 1 through 9] or the person’s legal representative.

(7) “Person” means an individual, partnership, corporation, association, or other legal entity or any political subdivision of the state or federal government.

(8) “Reasonably anticipated future uses” means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of a site where a coal-fired generating unit is located;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from an operator or owner, or both, of a coal-fired generating unit, affected property owners, and local planning officials.

(9) “Remediation” means all actions required by an applicable legal obligation directed exclusively toward achieving a degree of cleanup required in accordance with [section 7].

(10) “Retired” or “retire” means the complete and permanent closure of a coal-fired generating unit. Retirement occurs on the date that the coal-fired generating unit ceases combustion of fuel and permanently ceases to generate electricity.

Section 4. Integration – construction in event of conflict. (1) To avoid unnecessary duplication, the department shall integrate the provisions of [sections 1 through 9] with applicable legal obligations.

(2) If [sections 1 through 9] or any action taken by the department in accordance with [sections 1 through 9] conflicts with applicable legal obligations, the applicable legal obligations supersede the provisions of [sections 1 through 9].

Section 5. Remediation plan. (1) No later than 3 months after a coal-fired generating unit is retired and no earlier than 5 years prior to a coal-fired generating unit’s planned retirement, an owner shall submit a proposed remediation plan that contains:

(a) the name of the operator of the coal-fired generating unit and the names and addresses of all owners of the coal-fired generating unit;

(b) a general overview of the site where the unit is located, the unit itself, and affected property;

(c) the current and reasonably anticipated future uses of affected property; and

(d) remediation information, including:

(i) a list of reports, studies, or other evaluations related to remediation and specific remediation measures already completed or under way pursuant to any applicable legal obligation; and

(ii) the manner in which the remediation measures satisfy the requirements of [section 7] and a description of how the owner will comply.

(2) (a) If a coal-fired generating unit has more than one owner, the owners may jointly submit a remediation plan in accordance with [sections 1 through 9].

(b) If the owners are unable to submit a joint plan, then each owner of the coal-fired generating unit that is being retired or is retired is responsible for meeting the requirements of [sections 1 through 9]. If separate plans are filed, the department shall ensure that the plans detail legal obligations. If there is a conflict in the plans, the department shall reconcile the conflict to ensure that the plans are consistent with existing law and legal obligations.

(3) A plan required pursuant to subsection (1) may consist of a plan for more than one unit that is retired at the same time and planned for simultaneous remediation.

(4) The filing of a plan is not a commitment to retire a coal-fired generating unit on any particular date that is not otherwise required by an applicable legal obligation.

Section 6. Approval of plan – time limits – contents and expiration.

(1) (a) The department shall review for completeness a remediation plan and provide a written completeness notice to an owner within 60 days of receipt of the remediation plan and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must include all deficiencies identified in the information submitted.

(b) Review of the plan is not subject to Title 75, chapter 1, parts 1 through 3.

(c) During the review period provided in subsection (5), an owner may respond in writing to the comments received by the department during the public comment period.

(2) The department shall provide formal written notification of approval or modification within 120 days of determining a proposed remediation plan is complete, unless the owner and the department agree to an extension of the review to a date certain. Any modification by the department is limited to a modification necessary to conform the plan to applicable legal obligations.

(3) The department may access the site where the unit is located, the unit itself, and affected property, at reasonable times and after reasonable notice to the owner, during review of the plan to confirm information provided by the owner and is consistent with the proposed plan.

(4) The department shall approve a remediation plan if the department concludes that the plan meets the requirements of [sections 1 through 9].

(5) Within 10 days of the date the department determines that a proposed remediation plan is complete, the department shall publish a notice and brief summary of the proposed remediation plan in a daily newspaper of general circulation in the area affected and make the plan available to the public. The department also shall post the notice on its website. The notice must provide 45 days for submission of written comments to the department regarding the plan. The notice must also advise the public of the time and place of a public meeting at or near the coal-fired generating unit site regarding the proposed remediation plan. The meeting must be held within 45 days of the date that written notice of the department's completeness determination is provided to the owner or operator. To the extent there is any conflict between the public notice provisions of this section and those contained in any applicable legal

obligation, the provisions of the applicable legal obligation supersede the requirements of this subsection.

(6) If a remediation plan is modified by the department, the department shall promptly provide the public with notice through its website and the owner with notice through a written statement of the reasons for modification. A modification may be appealed in accordance with [section 8].

(7) To the extent costs are not recovered or recoverable under other applicable legal obligations, the department may recover its actual costs, including administrative costs, for its review of a plan and for its monitoring, inspection, and enforcement activities related to the approved plan. Recovered costs must be deposited in the environmental quality protection fund established in 75-10-704.

Section 7. Degree of cleanup required. A remediation plan must attain a degree of cleanup of the affected property consistent with, but not more stringent than, applicable legal obligations, giving consideration to reasonably anticipated future uses of affected property.

Section 8. Remediation plan – appeal – venue. (1) (a) Subject to subsection (1)(b), an owner or any person whose interests are or may be materially adversely affected by a final decision of the department to approve or modify a remediation plan under [sections 1 through 7] may file for judicial review of the department’s decision. The request for judicial review and a statement of the basis for the review must be filed with the court within 30 days of the department’s decision.

(b) In order for a person to file a request for review under subsection (1)(a), a person must have either submitted comments to the department on a remediation plan or submitted comments at a public meeting held in accordance with [section 6(5)], or the person must be challenging a change made by the department between the draft and final plan.

(2) An owner may appeal the department’s decision on a plan by submitting a request for judicial review. The request for judicial review and the statement of the basis for the review must be filed with the court within 30 days of the department’s decision.

(3) In considering a request for review under this part, the court shall uphold the decision made by the department unless the objecting person can demonstrate, on the administrative record, that the department’s decision was arbitrary and capricious or otherwise not in accordance with the law.

(4) A petition for judicial review under this section must be brought in the first judicial district, Lewis and Clark County.

Section 9. Enforcement of plan – penalty. (1) If the department finds that an owner has failed to file a plan or implement an approved plan, it may serve written notice of the violation, by certified mail, on the owner. The notice must specify the provisions of [sections 1 through 9] and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of mailing.

(2) The department’s order becomes final unless, within 30 days after notice of the department’s decision or determination, the owner submits to the department a written request for a hearing specifying the grounds for the appeal.

(3) (a) An action initiated under this section may include an administrative penalty determined by the department for each day of a violation. If an order issued by the department under this section requires the payment of an administrative civil penalty, the department shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the environmental quality protection fund established in 75-10-704.

(c) In determining the amount of penalty to be assessed for an alleged violation under this section, the department shall consider the penalty factors in 75-1-1001.

(d) The department may bring a judicial action to enforce a final administrative order issued pursuant to this subsection (3). The action must be filed in the district court of the first judicial district, Lewis and Clark County.

Section 10. Section 75-1-1001, MCA, is amended to read:

“75-1-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator’s prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator’s action;
- (e) the violator’s good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator’s financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a “supplemental environmental project” is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20, and [sections 1 through 9]; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.”

Section 11. Section 75-10-704, MCA, is amended to read:

“75-10-704. Environmental quality protection fund. (1) Subject to legislative fund transfers, there is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds allocated to the fund by the legislature;

(d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;

(e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(f) funds received from the interest income of the fund;

(g) funds received from settlements pursuant to 75-10-719(7);

(h) funds received from the interest paid pursuant to 75-10-722; and

(i) *costs recovered pursuant to [section 6(7)] and penalties recovered pursuant to [section 9]; and*

(~~h~~)(j) funds transferred from the orphan share account pursuant to 75-10-743(10). The full amount of these funds must be dedicated each fiscal year as follows:

(i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site; and

(ii) 50% to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371. This subsection (~~4~~)(~~i~~)(~~ii~~) (~~4~~)(j)(ii) does not apply to exploration or mining work performed after March 9, 1971. Projects funded under this subsection (~~4~~)(~~i~~)(~~ii~~) (~~4~~)(j)(ii) are not subject to the requirements of Title 75, chapter 10, part 7.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action. (Subsection (4)(i) (4)(j) terminates June 30, 2027--sec. 5, Ch. 387, L. 2015.)”

Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 13. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 9].

Section 14. Coordination instruction. If both Senate Bill No. 37 and [this act] are passed and approved, then Senate Bill No. 37 is void.

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. Effective date. [This act] is effective on passage and approval.

Section 18. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to a coal-fired generating unit retired on or after January 1, 2017.

Approved May 4, 2017

CHAPTER NO. 321

[HB 133]

AN ACT GENERALLY REVISING LAWS RELATED TO SENTENCING; REVISING CERTAIN DEFINITIONS; REVISING CRIMINAL HISTORY RECORD INFORMATION LAWS; EXPANDING THE TYPES OF OFFENSES FOR WHICH FINGERPRINTS MUST BE SENT TO THE STATE REPOSITORY; REVISING WHEN CERTAIN IDENTIFICATION INFORMATION MUST BE RETURNED TO AN INDIVIDUAL; CLARIFYING THE ELEMENTS NECESSARY TO SUPPORT A CRIMINAL ENDANGERMENT CHARGE; CLARIFYING THAT THE YOUTH COURT HAS JURISDICTION OF CHARGES OF ASSAULT WITH A BODILY FLUID WHEN COMMITTED BY A MINOR; LIMITING EXCEPTIONS TO MANDATORY MINIMUMS FOR CERTAIN SEXUAL OFFENSES WHEN VICTIM IS 12 YEARS OF AGE OR YOUNGER; REVISING THE MANDATORY MINIMUMS FOR CERTAIN SEXUAL OFFENSES WHEN VICTIM IS 12 YEARS OF AGE OR YOUNGER; CREATING A TIERED SENTENCING STRUCTURE FOR THEFT-BASED CRIMES; REDUCING PENALTIES FOR CERTAIN MISDEMEANORS; REDUCING PENALTIES FOR MOST DRUG OFFENSES; REVISING THE PERSISTENT FELONY OFFENDER DESIGNATION; REVISING THE REQUIREMENT FOR A CHEMICAL DEPENDENCY EDUCATION COURSE; REVISING CERTAIN DRIVING OFFENSES; REVISING DUI PENALTIES; AMENDING SECTIONS 41-5-206, 44-5-202, 45-2-101, 45-5-207, 45-5-214, 45-5-503, 45-5-507, 45-5-625, 45-6-301, 45-6-309, 45-6-316, 45-6-317, 45-6-325, 45-6-332, 45-8-101, 45-8-102, 45-8-111, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 46-1-202, 46-18-201, 46-18-204, 46-18-205, 46-18-222, 46-18-231, 46-18-502, 53-1-203, 61-5-102, 61-5-208, 61-5-212, 61-6-302, 61-6-304, 61-8-407, 61-8-422, 61-8-731, AND 61-8-732, MCA; REPEALING SECTIONS 45-9-208, 45-10-108, AND 46-18-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-206, MCA, is amended to read:

“41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney’s discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

- (iii) mitigated deliberate homicide as defined in 45-5-103;
- (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
- (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or
- (b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:
 - (i) negligent homicide as defined in 45-5-104;
 - (ii) arson as defined in 45-6-103;
 - (iii) aggravated assault as defined in 45-5-202;
 - (iv) sexual assault as provided in 45-5-502(3);
 - (v) assault with a weapon as defined in 45-5-213;
 - (vi) robbery as defined in 45-5-401;
 - (vii) burglary or aggravated burglary as defined in 45-6-204;
 - (viii) aggravated kidnapping as defined in 45-5-303;
 - (ix) possession of explosives as defined in 45-8-335;
 - (x) criminal distribution of dangerous drugs as defined in 45-9-101;
 - (xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6) 45-9-102(3);
 - (xii) criminal possession with intent to distribute as defined in 45-9-103(1);
 - (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
 - (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;
 - (xv) escape as defined in 45-7-306;
 - (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).
- (2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).
- (3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:
 - (a) a youth court proceeding and disposition will serve the interests of community protection;
 - (b) the nature of the offense does not warrant prosecution in district court; and
 - (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.
- (4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which the youth is found guilty. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 44-5-202, MCA, is amended to read:

"44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of corrections; and

(c) the department of justice.

(2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony *or a misdemeanor except as provided in subsection (5)*;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony *or a misdemeanor* is not arrested, the person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial appearance in court to answer the information or indictment against the person. *The individual being fingerprinted shall present the charging document, information, or citation at the time of fingerprinting, and the charging document, information, or citation must be returned to the individual after the fingerprints are taken.*

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if the accused has been arrested for the commission of a misdemeanor, except that an *An* individual arrested for a traffic, regulatory,

or fish and game offense may not be photographed or fingerprinted unless the individual is incarcerated.

(6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) If an individual is released without the filing of charges, if the charges did not result in a conviction, or if a conviction is later invalidated, *the court having jurisdiction in the criminal action shall report the disposition to the state repository as required in 44-5-213(2) within 14 business days.* ~~photographs~~ *Photographs* and fingerprints taken of the individual must be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, ~~in the following circumstances:~~

~~(a) upon order of the court that had jurisdiction; or~~

~~(b) upon the request of the individual. A criminal justice agency may not maintain any copies of the individual's fingerprints or photographs related to that charge or invalidated conviction."~~

Section 3. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions *resulting in a pecuniary loss to the victim of at least \$1,500, or \$1,500 in value*, motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses

and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or *and* sentence entered upon a plea of guilty or *nolo contendere* or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders the person incapable of appreciating the nature of the person's own conduct.

(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for

extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical,

merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury to or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) “Stolen property” means property over which control has been obtained by theft.

(73) A “stop” is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer’s presence.

(74) “Tamper” means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) “Telephone” means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(76) “Threat” means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another’s legal claim or defense.

(77) (a) “Value” means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner’s right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) “Vehicle” means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) “Weapon” means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) “Witness” means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding.”

Section 4. Section 45-5-207, MCA, is amended to read:

“45-5-207. Criminal endangerment – penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) *A high blood alcohol concentration, as provided in 61-8-407, alone is not sufficient to support a criminal endangerment charge.*

(2)(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.”

Section 5. Section 45-5-214, MCA, is amended to read:

“45-5-214. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely causes one of the person’s bodily fluids to make physical contact with:

(a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider’s profession and occupation:

(i) during or after an arrest for a criminal offense;

(ii) while the person is incarcerated in or being transported to or from a state prison, a county, city, or regional jail or detention facility, or a health care facility; or

(iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, health care facility, or shelter care facility; or

(b) an emergency responder.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor, ~~unless the charge is filed in district court, in which case the district court has jurisdiction.~~

(4) As used in this section, the following definitions apply:

(a) “Bodily fluid” means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

(b) “Emergency responder” means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident.”

Section 6. Section 45-5-503, MCA, is amended to read:

“45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person’s spouse, as provided in 45-5-501(1)(a)(ii)(D).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender’s offense occurred during a time period in which each offender could have reasonably known of the other’s offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 10 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222 46-18-222(1) through (5), and during the first 25 10 years of imprisonment, the offender is not eligible for parole. *The exception provided in 46-18-222(6) does not apply.*

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender’s life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim’s reasonable medical and counseling costs that result from

the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act “in the course of committing sexual intercourse without consent” includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed.”

Section 7. Section 45-5-507, MCA, is amended to read:

“45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed \$50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 10 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222 46-18-222(1) through (5), and during the first 25 10 years of imprisonment, the offender is not eligible for parole. *The exception provided in 46-18-222(6) does not apply.*

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender’s life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(6) In addition to any sentence imposed under subsection (3), (4), or (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim’s reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.”

Section 8. Section 45-5-625, MCA, is amended to read:

“45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 10 years of a sentence of imprisonment imposed under this subsection

(4)(a)(i) except as provided in ~~46-18-222~~ *46-18-222(1) through (5)*, and during the first ~~25~~ *10* years of imprisonment, the offender is not eligible for parole. *The exception provided in 46-18-222(6) does not apply.*

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

Section 9. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
 - (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
 - (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.
- (3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:
- (a) has the purpose of depriving the owner of the property;
 - (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
 - (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.
- (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:
- (a) a knowingly false statement, representation, or impersonation; or
 - (b) a fraudulent scheme or device.
- (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:
- (a) a knowingly false statement, representation, or impersonation; or
 - (b) deception or other fraudulent action.
- (6) ~~(a)~~ A person commits the offense of theft when the person:
- (a) purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302;
 - (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102; or
 - (c) purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not entitled.
- (7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:
- (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or
 - (b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.
- (8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding \$1,500 in value shall be fined an amount not to exceed ~~\$1,500~~ \$500 or be imprisoned in the county jail for a term not to exceed ~~6 months~~, or both. A person convicted of a second offense shall be fined ~~\$1,500~~ an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined ~~\$1,500~~ an amount not to exceed \$500 and be imprisoned in the county jail for a term of not less than ~~30~~ 5 days or more than ~~6 months~~ 1 year.
- (b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property ~~exceeding~~ that exceeds \$1,500 in value and does not exceed \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person

convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.

(ii) A person convicted of the theft of property exceeding \$5,000 in value or as part of a common scheme, or the theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs, shall be fined an amount not to exceed ~~\$50,000~~ \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(ii)(iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(10) A person convicted of the offense of theft of property not exceeding \$100 in value is presumed to qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or felony offense in the past 5 years."

Section 10. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property.

(1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person purposely and knowingly fails to return the property within 48 hours after the time provided for return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$1,500 in value shall be fined *an amount* not to exceed \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property ~~exceeding that exceeds~~ \$1,500 in value ~~shall be imprisoned in the state prison for a term not to exceed 10 years and does not exceed \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both.~~ A person convicted of a second offense shall

be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.

(c) A person convicted of failure to return rental or leased personal property exceeding \$5,000 in value or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.”

Section 11. Section 45-6-316, MCA, is amended to read:

“45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the offender knew that it would not be paid by the depository.

(3) (a) A person convicted of issuing a bad check *not exceeding \$500 in value shall be fined an amount not to exceed \$1,500 \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than 1 year and may be fined an amount not to exceed \$500.*

(b) *A person convicted of issuing a bad check that exceeds \$500 in value and does not exceed \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.*

(c) *A person convicted of issuing a bad check exceeding \$5,000 in value or as part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years.”*

Section 12. Section 45-6-317, MCA, is amended to read:

“45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when the person purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting the financial condition of the person making or directing another to make the statement for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person’s financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card that was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card; or

(v) using a credit card that has expired when the credit card clearly indicates the expiration date.

(2) (a) A person convicted of the offense of deceptive practices *if the value of any property, labor, or services obtained or attempted to be obtained does not exceed \$1,500 in value* shall be fined an amount not to exceed ~~\$1,500~~ \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. ~~If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than 1 year and may be fined an amount not to exceed \$500.~~

(b) A person convicted of the offense of deceptive practices *if the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500 in value and does not exceed \$5,000 in value* shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.

(c) A person convicted of the offense of deceptive practices *if the value of any property, labor, or services obtained or attempted to be obtained exceeds \$5,000 in value or as part of a common scheme* shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 13. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud the person knowingly:

(a) without authority makes or alters a document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers the document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) (a) A person convicted of the offense of forgery *if the value of the property, labor, or services obtained or attempted to be obtained does not exceed \$1,500* shall be fined an amount not to exceed ~~\$1,500~~ *\$500* or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both. *A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined an amount not to exceed \$500 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.*

(b) A person convicted of the offense of forgery for which the value of the property, labor, or services obtained or attempted to be obtained exceeds \$1,500 and does not exceed \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.

(c) A person convicted of the offense of forgery for which the value of the property, labor, or services obtained or attempted to be obtained exceeds \$5,000 in value or is part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.”

Section 14. Section 45-6-332, MCA, is amended to read:

“45-6-332. Theft of identity. (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person.

(2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was attempted to be gained or if an economic benefit of less than \$1,500 was gained or was attempted to be gained shall be fined an amount not to exceed ~~\$1,500;~~ *\$500* ~~imprisoned in the county jail for a term not to exceed 6 months, or both.~~ If the victim is a minor, the offender shall be fined an amount not to exceed \$3,000; *or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined an amount not to exceed \$500 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.*

(b) A person convicted of the offense of theft of identity if an economic benefit *of that exceeds \$1,500 or more and does not exceed \$5,000* was gained or was attempted to be gained shall be fined an amount not to exceed ~~\$10,000;~~ *\$5,000* ~~or be imprisoned in a the state prison for a term not to exceed 10 years, or both.~~ If the victim is a minor, the offender shall be fined an amount not to exceed \$20,000; *or be imprisoned in a the state prison for a term not to*

exceed 20 years, or both. *A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.*

(c) A person convicted of theft of identity if an economic benefit exceeding \$5,000 in value was gained or attempted to be gained shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) As used in this section, “personal identifying information” includes but is not limited to the name, date of birth, address, telephone number, driver’s license number, social security number or other federal government identification number, tribal identification card number, place of employment, employee identification number, mother’s maiden name, financial institution account number, credit card number, or similar identifying information relating to a person.

(4) If restitution is ordered, the court may include, as part of its determination of an amount owed, payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.”

Section 15. Determination of number of convictions. For the purpose of determining the number of convictions under 45-6-301, 45-6-309, 45-6-316, 45-6-317, 45-6-325, or 45-6-332, a conviction means:

- (1) a conviction, as defined in 45-2-101, under the same statute;
- (2) a conviction for a violation of a similar statute in another state; or
- (3) a forfeiture of bail or collateral deposited to secure the defendant’s appearance in court in this state or another state for a violation of a similar statute, which forfeiture has not been vacated.

Section 16. Section 45-8-101, MCA, is amended to read:

“45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) rendering vehicular or pedestrian traffic impassable;
- (e) rendering the free ingress or egress to public or private places impassable;
- (f) disturbing or disrupting any lawful assembly or public meeting;
- (g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- (h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (i) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) *(a) Except as provided in ~~subsection~~ subsections (2)(b) and (3), a person convicted of the offense of disorderly conduct shall be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.*

(b) A person convicted of a second or subsequent violation of subsections (1)(a) through (1)(f) within 1 year shall be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days.

(3) A person convicted of a violation of ~~subsection (1)(i)~~ *subsections (1)(g) through (1)(i)* shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.”

Section 17. Section 45-8-102, MCA, is amended to read:

“45-8-102. Failure of disorderly persons to disperse. (1) Where ~~two~~ *one* or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined *an amount* not to exceed \$100 or be imprisoned in the county jail for a term not to exceed ~~10 days~~ *1 day*, or both.”

Section 18. Section 45-8-111, MCA, is amended to read:

“45-8-111. Public nuisance. (1) “Public nuisance” means:

(a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition that renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if the person knowingly creates, conducts, or maintains a public nuisance.

(3) Any act that affects an entire community or neighborhood or any considerable number of persons, as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a public nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or *the* commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined *an amount* not to exceed \$500 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both~~. Each day of the conduct constitutes a separate offense.”

Section 19. Section 45-9-101, MCA, is amended to read:

“45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) *A person convicted of criminal distribution of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish shall be imprisoned in the state prison for a term not to exceed 5 years and may be fined not more than \$5,000.*

~~(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(19)(d), or an opiate, as defined in 50-32-101, shall be imprisoned~~

in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

~~(3) (a) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(b) Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(c) The exception for marijuana or tetrahydrocannabinol in subsection (3)(a) does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222.~~

~~(3) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing any dangerous drug, as defined in 50-32-101, shall be sentenced as provided in 45-9-102.~~

~~(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) subsection (1), (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life not to exceed 25 years or be fined an amount of not more than \$50,000, or both.~~

~~(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:~~

~~(a) If convicted pursuant to subsection (2), For a first offense, the person shall be imprisoned in the state prison for not less than 4 years or more than life a term not to exceed 40 years and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, For a second or subsequent offense, the person shall be imprisoned in the state prison for not less than 20 years or more than a term not to exceed life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.~~

~~(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."~~

Section 20. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of

marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than *not to exceed* \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence.

(a) A person convicted of a second or ~~subsequent~~ offense under this subsection (2) is punishable by a fine *shall be fined an amount* not to exceed \$1,000 \$500 or by imprisonment *be imprisoned* in the county jail for a term not to exceed 1 year 6 months, or in the state prison for a term not to exceed 3 years or by both *or both*.

(b) A person convicted of a third or subsequent offense under this subsection (2) shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(c) This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs in 50-32-222.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed \$50,000.

(b) ~~During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.~~

(c) ~~The court shall, as conditions of probation pursuant to subsection (5)(a), order:~~

(i) ~~the person to abide by the standard conditions of probation established by the department of corrections;~~

(ii) ~~payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;~~

(iii) ~~that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;~~

(iv) ~~that the person may not consume alcoholic beverages;~~

(v) ~~the person to enter and remain in an aftercare program as directed by the person's probation officer; and~~

(vi) ~~the person to submit to random or routine drug and alcohol testing.~~

(6)(3) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsections (2) through (5) subsection (1) or (2) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed ~~\$50,000~~ \$5,000, or both.

(7)(4) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(8)(5) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.”

Section 21. Section 45-9-103, MCA, is amended to read:

“45-9-103. Criminal possession with intent to distribute. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101, with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222. A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish shall be imprisoned in the state prison for a term of not more than 5 years or be fined an amount not to exceed \$5,000, or both.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.”

Section 22. Section 45-9-110, MCA, is amended to read:

“45-9-110. Criminal production or manufacture of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(19)(d), or an opiate, as defined in 50-32-101, dangerous drugs, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not less than 5 years or more than life more than 25 years and may be fined not more than an amount not to exceed \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule H of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule H drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule H drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. The penalties provided for in this subsection also apply to the criminal production or manufacture of synthetic cannabinoids listed as dangerous drugs in 50-32-222.

~~(4)(3) A person convicted of criminal production or manufacture of marijuana; or tetrahydrocannabinol; or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term of not to exceed 10 more than 5 years and may be fined not more than \$50,000 an amount not to exceed \$5,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life a term of not more than 25 years and may be fined not more than an amount not to exceed \$50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.~~

~~(5)(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."~~

Section 23. Section 46-1-202, MCA, is amended to read:

"46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(3) "Arrest" means taking a person into custody in the manner authorized by law.

(4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(6) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(8) "Court" means a place where justice is judicially administered and includes the judge of the court.

(9) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

(17) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(18) "*Persistent felony offender*" means an offender who has previously been convicted of two separate felonies and who is presently being sentenced for a third felony committed on a different occasion than either of the first two felonies. At least one of the three felonies must be a sexual offense or a violent offense as those terms are defined in 46-23-502. An offender is considered to have previously been convicted of two separate felonies if:

(a) the two previous felonies were for offenses that were committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the most recent of the two felony convictions; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) *the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at a postconviction hearing.*

(19)(19) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(20)(20) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(21)(21) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

(22)(22) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(23)(23) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(24)(24) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(25)(25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.

(26)(26) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(27)(27) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(28)(28) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(29)(29) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(30)(30) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(31)(31) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 24. Section 46-18-201, MCA, is amended to read:

“46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections; with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

~~(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;~~

~~(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;~~

~~(vii)(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or~~

~~(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or~~

~~(viii)~~(vii) any combination of subsections (2) and (3)(a)(i) through ~~(3)(a)~~(vii) ~~(3)(a)(vii)~~.

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose ~~upon~~ *on* the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

~~(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;~~

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

~~(i) with the approval of the prerelease center or prerelease program and the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a prerelease center or prerelease chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;~~

~~(j)~~(j) community service;

~~(k)~~(k) home arrest as provided in Title 46, chapter 18, part 10;

~~(l)~~(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

~~(m)~~(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

~~(n)~~(n) participation in a day reporting program provided for in 53-1-203;

~~(o)~~(o) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

~~(p)~~(p) participation in a restorative justice program approved by court order and payment of a participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

~~(q)~~(q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

~~(r)~~(r) any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(q)~~ (4)(q).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) *When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.*

(9)(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 25. Section 46-18-204, MCA, is amended to read:

"46-18-204. Dismissal after deferred imposition. (1) Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred or upon termination of the time remaining on a deferred sentence under 46-18-208:

(a) for a felony conviction, the court shall strike the *plea of guilty or nolo contendere or the verdict of guilty* from the record and order that the charge or charges against the defendant be dismissed provided that a petition for revocation under 46-18-203 has not been filed; or

(b) for a misdemeanor conviction, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may strike the verdict of guilty from the record and order that the charge or charges against the defendant be dismissed.

(2) A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only by district court order upon good cause shown."

Section 26. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences – restrictions on deferral or suspension. (1) If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-507, incest; or

(d) 45-8-218, deviate sexual conduct.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

- (a) 45-5-103(4), mitigated deliberate homicide;
- (b) 45-5-202, aggravated assault;
- (c) 45-5-302(2), kidnapping;
- (d) 45-5-303(2), aggravated kidnapping;
- (e) 45-5-401(2), robbery;
- (f) 45-5-502(3), sexual assault;
- (g) 45-5-503(2) and (3), sexual intercourse without consent; *and*
- (h) 45-5-603, aggravated promotion of prostitution;
- ~~(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;~~
- ~~(j) 45-9-102(4), criminal possession of dangerous drugs; and~~
- ~~(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.~~

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4)."

Section 27. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), ~~45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), or 45-5-625(4)~~ and the judge determines, based on the findings contained in a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate

protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination.”

Section 28. Section 46-18-231, MCA, is amended to read:

“46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

- (i) 45-5-103(4), mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-213, assault with a weapon;
- (iv) 45-5-302(2), kidnapping;
- (v) 45-5-303(2), aggravated kidnapping;
- (vi) 45-5-401(2), robbery;
- (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
- (viii) 45-5-503(2) through (4), sexual intercourse without consent;
- (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;
- (x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was 18 years of age or older at the time of the offense;
- (xi) 45-5-625(4), sexual abuse of children;
- (xii) ~~45-9-101(2), (3), and (5)(d) 45-9-101(4), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;~~
- (xiii) ~~45-9-102(4), criminal possession of an opiate;~~
- (xiv) ~~45-9-103(2), criminal possession of an opiate with an intent to distribute; and~~
- (~~xv~~)(*xiii*) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed \$50,000.”

Section 29. Section 46-18-502, MCA, is amended to read:

“46-18-502. Sentencing of persistent felony offender. (1) Except as provided in 46-18-219 and subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed

\$50,000, or both, if the offender was 21 years of age or older at the time of the commission of the present offense.

(2) Except as provided in 46-18-219, an offender shall be imprisoned in a state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if:

(a) the offender was a persistent felony offender, as defined in ~~46-18-501~~ ~~46-1-202~~, at the time of the offender's previous felony conviction;

(b) less than 5 years have elapsed between the commission of the present offense and:

(i) the previous felony conviction; or

(ii) the offender's release on parole, from prison, or from other commitment imposed as a result of the previous felony conviction; and

(c) the offender was 21 years of age or older at the time of the commission of the present offense.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) of this section or the first 10 years of a sentence imposed under subsection (2) of this section may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed."

Section 30. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) to carry out the purposes of 41-5-125;

(ii) for the siting, establishment, and expansion of prerelease centers;

(iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

(v) for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in ~~45-9-102~~, 46-18-201; or 46-18-202, and any other sections relating to alternative sentences for persons convicted

of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(j) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on juvenile parole supervision.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in

programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.”

Section 31. Section 61-5-102, MCA, is amended to read:

“61-5-102. Drivers to be licensed – penalties *penalty*. (1) (a) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver’s license. A person may not receive a Montana driver’s license until the person surrenders to the department all valid driver’s licenses issued by any other jurisdiction. A person may not have in the person’s possession or under the person’s control more than one valid Montana driver’s license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a first violation of this section is a fine of not more than \$500, ~~imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less than 2 days or more than 6 months.~~

(c) A person who is eligible to hold a driver’s license and has obtained a valid driver’s license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the ~~penalties~~ *penalty* in subsection (1)(b).

(2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words “motorcycle endorsement”.

(ii) A motorcycle endorsement is not required for the operation of a low-speed electric vehicle or a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words “commercial driver’s license”, and the license bears the proper endorsement for:

- (i) the specific vehicle type or types being operated; or
- (ii) the passengers or type or types of cargo being transported.

(3) A low-speed restricted driver’s license is not valid for the operation of a motor vehicle other than a low-speed electric vehicle or a golf cart.

(4) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver’s license valid under the provisions of this chapter.”

Section 32. Section 61-5-208, MCA, is amended to read:

“61-5-208. Period of suspension or revocation – limitation on issuance of probationary license – notation on driver’s license. (1) The

department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course or treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

- (i) operation is authorized by the person's probation officer; or
- (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 33. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without valid license or licensing exemption-- seizure of vehicle or rendering vehicle inoperable. (1) (a) A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

~~(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.~~

(b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a suspension or revocation period shall be fined an amount not to exceed \$500 or be imprisoned for a term of not more than 6 months, or both.

~~(ii)(iii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment imprisoned for a term of not less than 2 days or a term of not less than 2 days or more than 6 months or a fine be fined an amount not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.~~

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

~~(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410, or 61-8-411 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.~~

~~(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.~~

~~(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.~~

~~(6) A court may not suspend or defer imposition of penalties provided by this section."~~

Section 34. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) (a) Each owner or operator of a motor vehicle shall carry in the motor vehicle as proof of compliance with 61-6-301 either:

(i) an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner; or

(ii) an electronic device on which an electronic document issued by the insurance carrier showing proof of compliance with 61-6-301 may be displayed.

(b) If the insurance card or electronic document is issued under a commercial automobile insurance policy or a self-insured fleet, the insurance card or electronic document must indicate the status as "commercially insured" or "fleet".

(c) A motor vehicle owner or operator shall exhibit the insurance card or display the electronic document on demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department.

(d) A person commits an offense under this subsection if the person fails to carry in the motor vehicle the insurance card or an electronic device on which the electronic document may be displayed or fails to exhibit the insurance card or display the electronic document on demand of a person specified in subsection (2)(c).

(e) For the purposes of this subsection (2), "insurance card" includes an electronic representation or equivalent of a documentary insurance card that the insurer delivers by electronic means, as defined in 33-15-601, to satisfy the requirements of this subsection (2).

(3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

(a) personally; or

(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through

available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

(4) An owner or operator charged with violating subsection (2) may not be convicted if:

(a) the arresting *or issuing* officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time ~~of arrest~~ *the alleged violation took place*; or

(b) when the system under 61-6-157 is not available, the person produces in court or the office of the arresting *or issuing* officer proof of insurance valid at the time ~~of arrest~~ *the alleged violation took place.*"

Section 35. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 ~~or by imprisonment in the county jail for not more than 10 days, or both.~~ A second conviction is punishable by a fine of \$350 ~~or by imprisonment in the county jail for not more than 10 days, or both.~~ A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the county jail for not more than ~~6 months~~ *10 days*, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall report the surrender of the registration receipt and license plates to the department, which shall immediately suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless the court decides to retain the license plates for the owner until the registration suspension has been completed or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

(3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

~~(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.~~

~~(5) A court may not defer imposition of penalties provided by this section.~~

~~(6)(4) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction.”~~

Section 36. Section 61-8-407, MCA, is amended to read:

“61-8-407. Definition of alcohol concentration. For purposes of 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title, “alcohol concentration” means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.”

Section 37. Section 61-8-422, MCA, is amended to read:

“61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture – penalty. (1) It is unlawful for the owner of a vehicle subject to seizure under 61-5-212 or seizure and forfeiture under 61-8-733 to transfer, sell, or encumber the owner’s interest in that vehicle from the time of the owner’s arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both.”

Section 38. Section 61-8-731, MCA, is amended to read:

“61-8-731. Driving under influence of alcohol or drugs – driving with excessive alcohol concentration – under influence of delta-9-tetrahydrocannabinol – aggravated driving under the influence – penalty for fourth or subsequent offense. (1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction under 45-5-106 or any combination of three or more or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) ~~(i) sentencing the person being sentenced~~ to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 13 months or more than 2 years. The court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the sentence must be served on probation. The imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole.

~~(b)(ii) sentencing the person being sentenced~~ to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

~~(c)(iii) a fine in an amount of not less than \$5,000 or more than \$10,000; or~~

~~(b) (i) being sentenced to an appropriate treatment court program for a term of not more than 5 years, with required completion; and~~

~~(ii) a fine in an amount of not less than \$5,000 or more than \$10,000.~~

~~(c) If sentenced under subsection (1)(b), the person may be entitled to a suspended sentence and is not eligible for a deferred imposition of sentence.~~

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program approved by the department of corrections.

(3) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both; and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both.

(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of assigned counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 39. Section 61-8-732, MCA, is amended to read:

“61-8-732. Driving under influence of alcohol or drugs – driving with excessive alcohol concentration – assessment, ~~education,~~ education, and treatment required. (1) In addition to the punishments provided in 61-8-465, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 shall complete:

(a) a chemical dependency assessment;

(b) *for a first conviction, except as provided in subsection (8)(b), a chemical dependency education course; and*

~~(b) a chemical dependency education course; and~~

~~(c)~~(c) on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except a fourth or ~~subsequent~~ or *subsequent* conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge ~~may, in the judge’s discretion,~~ *may, in the judge’s discretion,* require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. ~~If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.~~

(3) ~~The chemical dependency assessment and the chemical dependency education course and the chemical dependency education course~~ must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. *Approved programs must be evidence-based programs.* The defendant may attend a treatment program of the defendant’s choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, ~~the education course,~~ *the education course,* and chemical dependency treatment *and may use health insurance to cover the costs when possible.*

(4) The assessment must describe the defendant’s level of addiction, if any, and contain a recommendation as to ~~education,~~ *education,* treatment, or ~~both,~~ *both.* *The assessment must conform to quality standards required by the department of public health and human services.* A defendant who disagrees with the initial assessment may, at the defendant’s cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant’s alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. *The rules must include evidence-based treatment programs or courses approved by the department that are likely to reduce recidivism.* Upon determination, the court shall order the defendant’s appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing ~~education or education or~~ treatment shall, at the commencement of ~~the education or the education or~~ treatment, notify the court that the defendant has been enrolled in a chemical dependency ~~education course or education course or~~ treatment program. If the defendant fails to

attend the ~~education course or~~ *course or* treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an “open meeting”, as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) (a) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 upon a finding of ~~chemical dependency~~ *moderate or severe alcohol or drug use disorder* made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(b) *If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be required to attend a chemical dependency education course.*

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year.”

Section 40. Repealer. The following sections of the Montana Code Annotated are repealed:

45-9-208. Mandatory dangerous drug information course.

45-10-108. Mandatory dangerous drug information course.

46-18-501. Definition of persistent felony offender.

Section 41. Codification instruction. [Section 15] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 15].

Section 42. Coordination instruction. If Senate Bill No. 280 and [this act] are both passed and approved and if both contain a section that amends 61-5-212, then the section in Senate Bill No. 280 that amends 61-5-212 is void.

Section 43. Effective date. [This act] is effective July 1, 2017.

Section 44. Applicability. [This act] applies to offenses committed after June 30, 2017.

Approved May 4, 2017

